

CLASSIFIED

File No. Dossier 45-CDA-13-1-3-LUBICON LAKE BAND  
Volume 15 From-De 89-09-01 To-À 89-11-30.  
VOLS ACCESSION NO. 212719

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45-CDA-13-1-3-LUBICON LAKE  
Vol 15

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SEMI ACTIVE

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TITLE—TITRE:

SOCIAL AFFAIRS  
HUMAN RIGHTS  
POLICY & PLANS CANADA  
COMPLAINTS TO UNITED NATIONS  
ABOUT VIOLATIONS IN CANADA  
LUBICON LAKE BAND

AFFAIRES SOCIALES  
DROITS DE L'HOMME  
PRINCIPES ET PROJETS CANADA  
PLAINTES AUX NATIONS UNIES AU  
SUJET DES VIOLATIONS AU CANADA  
LUBICON LAKE BAND

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DEPARTMENT  
OF  
EXTERNAL AFFAIRS

MINISTÈRE  
DES  
AFFAIRES EXTÉRIEURES

2009



Government  
of Canada

Gouvernement  
du Canada

# CLOSED VOLUME VOLUME COMPLET

Dated From  
À compter du

89-09-01

To  
Jusqu'au

89-11-30

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

16.

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

UNCLAS

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

TO  
AThe Under-Secretary of State for  
External Affairs, Ottawa, IMH

NO.

DATE

UDGR 1210

Nov. 30, 1989

QUANTITY  
QUANTITÉ

DESCRIPTION - DESCRIPTION

REFERENCE - RÉFÉRENCE

45-13-CDA

Copy of material presented to Embassy  
this date

Ourtel UDGR 1209 30Nov89

Lubicon Indian Band Negotiations

Meeting with Private Swedish Organiza-  
tion refers.

DATE

FILE

DOSSIER

45-CDA-13, 1-3-Lubicon

C7-C

Lake Band

*Brinco*

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

RETURN TO / RETOURNER À

The Canadian Embassy, Stockholm  
(M. Bigalow)

DATE

SIGNATURE

*MB*



**FÖRENINGEN FJÄRDE VÄRLDEN/SVERIGE**  
**FOURTH WORLD ASSOCIATION/SWEDEN**

- information, dokumentation, aktion -  
Postadress: Box 101 90, 100 55 Stockholm

To the Ambassador  
Canadian Embassy  
Tegelbacken 4  
Stockholm

30 November, 1989

Mr Ambassador,

we are writing now to express our concern about the possibility of a confrontation between the Lubicon Cree and the government of Canada. We are aware that the Lubicon people have set a deadline of December 1st for an agreement to be reached. It is our hope that the Canadian government will recognize the rights of the Lubicon people to control their own land and be compensated fairly for resources already exploited.

Please keep us informed about developments in the Lubicon dispute.

Sincerely,

*Christina  
Grönberg*

Christina Grönberg  
President  
Swedish-American Indian Ass.

*Peter Thyselius*  
Peter Thyselius  
Coordinator  
Fourth World Ass.

Tel: 08/424116

Besöksadress i Stockholm:  
Wollmar Yxkullsgatan 15B, T-Mariatorget

Postgiro:  
479 54 91-2

## TREATY ALLIANCE OF NORTH AMERICAN ABORIGINAL NATIONS

WHEREAS the sovereign territories of North American Aboriginal Nations have been invaded, occupied, exploited and despoiled by foreign powers from outside North America;

AND WHEREAS this invasion and occupation of the sovereign territories of North American Aboriginal Nations has been accomplished through deceit, force of arms and/or the threat of force of arms;

AND WHEREAS the consequences of this invasion and occupation of the sovereign territories of North American Aboriginal Nations include the extinction through deliberate genocide of many such North American Aboriginal Nations, the ever escalating exploitation of the natural resources upon which remaining North American Aboriginal Nations depend for their survival, and environmental effects so severe as to literally threaten the survival of all people everywhere on earth;

NOW, THEREFORE, The Parties to this Treaty hereby reaffirm their desire to live in peace with all peoples and governments; declare their determination to protect and preserve their peoples, lands, resources, heritage and culture; and agree to join their efforts at self-help and self-defense through mutual aid and assistance as follows:

Article 1. The Parties will consult whenever, in the opinion of any of them, the territorial integrity, political independence, security or other fundamental rights of any of the Parties is threatened.

Article 2. The Parties agree that a threat against one of them shall be considered a threat against them all; and consequently agree, if such threat occurs, each of them, in exercise of the internationally recognized right of individual or collective self-defense, will assist the Party or Parties so threatened by taking forthwith, individually and/or in concert with the other Party or Parties, such action as it deems necessary to restore and maintain the security of the involved Party or Parties.

Article 3. The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall be organized so as to be able to meet promptly at any time. The Council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a Defense Committee which shall recommend measures for the implementation of Article 2.

Article 4. The Parties may, by unanimous agreement, invite any other North American Aboriginal Nation in a position to further the principles of this Treaty and contribute to the security of the Parties to accede to this Treaty. Any North American Aboriginal Nation so invited may become a Party to the Treaty by depositing its instrument of accession with the Council established by this Treaty. The Council shall forthwith inform each of the Parties of the deposit of each instrument of accession.

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July 07, 1989 — Huron Territory (Quebec City, Quebec)

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Vice-Chief, Quebec & Labrador  
Assembly of First Nations  
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Nishnawbe-Aski Nation (20,000)  
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July 19, 1989 -- Cree Territory (Edmonton, Alberta)

Chief Charles Beaver  
Bigstone Indian Nation (2,000)  
General Delivery  
Wabasca, AB TOC OTO  
403-891-3836  
Fax: 403-891-3942

Chief Victor Buffalo  
Samson Indian Nation (3,770)  
P.O. Box 159  
Hobbema, AB TOC 1NO  
403-421-4926; 403-585-3793  
Fax: 403-585-2226

Chief Roy Whitney  
Sarcee Indian Nation (875)  
3700 Anderson Rd. SW  
Calgary, AB T2W 3C4  
403-281-4455; 403-281-9781;  
FAX: 403-251-5871

October 26, 1989 -- Cold Lake First Nations Territory (Cold Lake, Alberta)

Chief Harvey Scanie  
Cold Lake First Nations (594)  
Box 1769  
Grand Centre, AB TOA 1TO  
403-594-7183  
FAX: 403-594-3577

Chief A.J. (Al) Lameman  
Beaver Lake Tribal Administration (220)  
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Lac La Biche, AB TOA 2CO  
403-623-4549 (o)  
403-623-7746 (h)  
FAX: 403-623-4523

Chief Ernest Sundown  
Joseph Bighead First Nation (479)  
Box 309  
Pierceland, Saskatchewan SOM 2K0  
306-839-2277/78 (o)  
306-839-2321 (h)  
FAX: 306-839-2323

November 09, 1989 -- Saddle Lake First Nation Territory

Chief Carl Quinn  
Saddle Lake First Nation  
Box 100  
Saddle Lake, AB TOA 3TO  
403-726-3849 (o)  
428-0866/428-0985  
FAX: 403-726-3788

Article 5. This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective decision-making processes. The instruments of ratification shall be deposited as soon as possible with the Council established by this Treaty, which Council shall notify forthwith all of the other signatories of each deposit. The Treaty shall enter into force between the Parties which have ratified it as soon as the instruments of ratification have been deposited.

Article 6. After the Treaty has come into force, the Parties shall, if any of them so request, consult for the purpose of reviewing the Treaty, having regard for the factors then affecting the security of North American Aboriginal Nations, including the development of universal and/or regional arrangements for the maintenance of the security of North American Aboriginal Nations.

Article 7. Any Party may cease to be a Party upon giving its notice of withdrawal to the Council established by this Treaty, which Council shall forthwith inform the other Parties of any such notice of withdrawal.

Article 8. True copies of this Treaty shall be held by each of the initial signatories to the Treaty. Duly certified copies thereof will be transmitted by the Council hereby established to each of the Parties later acceding to it.

DONE IN ..... TERRITORY this ..... day of .....

Treaty Alliance of North American Aboriginal Nations Signers

July 06, 1989 -- Ouje-Bougoumou Indian Territory (Chibougoumau, Quebec)

Chief Bernard Ominayak  
Lubicon Lake Indian Nation (540)  
3536 - 106 Street  
Edmonton, AB T6J 1A4  
403-436-5652  
403-629-3945  
FAX: 403-437-0719 or 403-629-3939

Chief Roger Jones  
Ojibways of Shawanaga First Nation  
R.R. #1, Nobel, ONT POG 1G0  
705-366-2526

Mr. David J. Peter-Paul  
Band Council Advisor  
Pabineau Indian First Nation (120)  
R.R. #5, Box 1, Site 26  
Bathurst, New Brunswick E2A 3Y8  
506-548-9211  
FAX: 506-548-9849

Chief Douglas Daybutch  
Mississauga First Nation (631)

### LUBICON SET 1 DEC. 1989 DEADLINE

The Lubicon Cree in Alberta, Canada have given Petro-Canada, the government owned oil company, until 1 December 1989 to comply with their demands or risk eviction. The Lubicon have requested that Petro-Canada apply for retroactive permits and pay royalties on 27 oil wells the company either owns (at least according to the Canadian government) directly or in partnership that are located on Lubicon traditional lands.

Chief Bernard Ominayak has stated that unless the company complies, oil wells could be dismantled and actions could be taken against the company's head office in Calgary. Negotiations have intensified between the Lubicon and the government. However, neither Petro-Canada nor the government have responded in terms acceptable to the Lubicon. A CONFRONTATION SEEMS INEVITABLE. At the same time, Indian people in Canada have organized in unprecedented solidarity with each other by forming a treaty alliance that has been called a "Native NATO".

#### Background Documents Attached:

- Letter of 28 October, 1989 from Chief Bernard Ominayak, Lubicon Lake Indian Nation to The Hon. B. Mulroney, Prime Minister, Government of Canada.
- Lubicon Update, 10 Nov. 1989.
- Treaty Alliance Of North American Aboriginal Nations, with a list of signers.
- Some newspaper articles from the "Edmonton Journal", Edmonton, Alberta.

Reprinted from GreenNet Comoputer Network  
Topic 169, LUBICON CHIEF TO PRIME MINISTER  
car gn.tribalsurvive, 8:06 am, Nov 20, 1989 (at web.UUCP)

Lubicon Lake Indian Nation  
Little Buffalo Lake, AB  
403-629-3945  
FAX: 403-629-3939

Mailing address:  
3536 - 106 Street  
Edmonton, AB T6J 1A4  
403-436-5652  
FAX: 403-437-0719

October 28, 1989

The Hon. B. Mulroney  
Prime Minister  
Government of Canada  
Ottawa, ONT

Dear Mr. Prime Minister:

Your Government has exclusive constitutional responsibility in Canada for negotiating a settlement of unceded Lubicon land rights. It also owns an oil company operating in unceded Lubicon territory called Petro-Canada.

People across Canada and around the world know that your Government has never engaged in serious, good-faith negotiation of unceded Lubicon land rights. Rather it has only used the pretense of serious negotiations to set the stage for a deceitful propaganda campaign designed to publicly discredit the Lubicon people, and for an on-the-ground political campaign designed to tear Lubicon society apart.

In addition to Canadian Government efforts to publicly discredit the Lubicon people and tear Lubicon society apart, Federally-owned Petro-Canada — operating both on its own and in conjunction with other oil companies — has been conducting illegitimate oil development activities on unceded Lubicon land. These illegitimate oil development activities have been proceeding without the consent of the Lubicon people, and have caused great and irreparable damage to the traditional Lubicon economy and way of life. Moreover these illegitimate oil development activities both violate and undermine rightful Lubicon jurisdiction over unceded Lubicon territory.

There's of course nothing that the Lubicon people can do to force you or your Government to conduct Canadian affairs of state with decency, honour and integrity. However, if we can't protect our legitimate aboriginal land rights through a negotiated settlement with the Government of Canada, there are things which we can and will do to enforce our rightful jurisdiction over our unceded traditional territory — starting with illegitimate oil development activity in our unceded

traditional territory being conducted by Petro-Canada and other oil companies working in conjunction with Petro-Canada.

Effective November 01, 1989, Federally-owned Petro-Canada, and other oil companies working in conjunction with Federally-owned Petro-Canada on unceded Lubicon land, have thirty (30) days to obtain retroactive operating permits and leases from the Lubicon people, and to make arrangements for the payment of royalties on resources extracted -- both past and future. Approval of such retroactive operating permits and leases will be subject to compliance with Lubicon environmental protection and wildlife management laws, as determined by an appropriate Lubicon regulation agency established for that purpose, and may be cancelled for violation of said laws. Failure to meet any of these conditions will make involved projects subject to removal as unauthorized developments on unceded Lubicon territory.

Sincerely,

Bernard Ominayak, Chief Lubicon Lake Indian Nation

cc: Mr. W.H. Hopper, Petro-Canada Board Chairman and Chief Executive Officer  
The Hon. Getty, Premier, Government of Alberta  
The Hon. J. Turner, Leader, Federal Official Opposition  
The Hon. E. Broadbent, Leader, Federal New Democratic Party  
Ms. Ethel Blondin, M.P., Liberal Aboriginal Affairs Critic  
Mr. Robert Skelly, M.P., NDP Aboriginal Affairs Critic  
Mr. R. Martin, M.L.A., Leader, New Democratic Official Opposition  
Mr. L. Decore, M.L.A., Leader, Alberta Liberals  
Mr. B. Hawkesworth, M.L.A., ND Aboriginal Affairs Critic  
Mr. N. Taylor, M.L.A., Liberal Aboriginal Affairs Critic  
Mr. G. Erasmus, National Chief, Assembly of First Nations  
Mr. John Amagoalik, Inuit Committee on Native Issues  
Mr. Zebedee Nungak, Inuit Committee on Native Issues  
Mr. Donald Rojas, Vice-President, World Council of Indigenous Peoples  
Mr. Jim Sinclair, President, Metis National Council  
President, Native Council of Canada  
Leaders of Provincial Aboriginal Associations  
All Chiefs of Alberta  
All Signatories to Treaty Alliance of North American Aboriginal Nations

For more information contact web:car by e-mail or in writing  
Aboriginal Rights Support Group  
Committee Against Racism  
P.O. Box 3085, Station B  
Calgary, Alberta T2M 4L6

Printed from GreenNet Comoputer Network, Topic 163 Lubicon Update  
car gn.tribalsurvi 8:25 am Nov 10, 1989, (at web.UUCP)

The Lubicon Lake Indians of Northern Alberta, about 500 people of Native ancestry, have inhabited their traditional lands for many generations. Since 1940, when the Federal Government of Canada approved a reserve for them, oil and gas development, and most recently, massive pulp mill establishments, have encroached on their traditional lands, their culture, and their very existence as a unique and viable Native society. While the Lubicons are fighting for their unextinguished aboriginal rights and against the destruction of their traditional lifestyle in various courts and at the negotiating tables, increased 'resource' development and exploitation of the environment around them has continued to this very day.

Whereas 10 years ago the Lubicon Nation was a self-sufficient, tight-knit and remote community, today's situation is very different indeed. The continuous onslaught of government-sponsored oil and gas exploration has left this once self-sufficient people in shambles. Within 5 years the Lubicons have lost their traditional way of life. The animals they relied on previously have been scared away and self-sufficiency has turned into 95% welfare, alcohol abuse and despair. An outbreak of tuberculosis on a scale reminiscent of third world countries, occurred in late 1987. The drastic and sudden change of diet from moose (a high protein food), to 'white' welfare-food like bologna, continuous stress of experiencing the extensive destruction of their environment, and of their existence, has brought about devastating effects to these people. Their way of life, so dependent on wildlife, free-flowing streams, and gathering of herbs, has been taken from them in the name of 'progress' and the almighty dollar. The government of Canada, who's responsibility it is to settle outstanding land claims, has even ignored United Nations Human Rights Committee recommendations to halt all further activities which could harm the Lubicon people.

The Lubicon People had hoped for a settlement of this issue by January 1989, but negotiations have ended in failure. The Government of Canada 'offered' a take it or leave it deal in which the question of Band memberships, compensation and future development were approached in such a way that the community would once again rely on handouts and become wards of the government. Although our efforts over the years have resulted in much more awareness of this and other related issues, it is direct public pressure in the form of letters etc. to the Federal Government which will convince it that this small group of Indians is not alone in the struggle for Aboriginal Rights vs. 'resource' exploitation and the resulting genocide (both cultural and physical) of Indigenous Peoples around the world.

While the governments delay and 'offer' meaningless proposals, the Lubicons wait in vain for a future their children and grandchildren can look forward to.

For more information contact web:car by e-mail or write to:  
Aboriginal Rights Support Group, Committee Against Racism  
P.O. Box 3085, Station B, Calgary, Alberta T2M 4L6  
Tel: (403) 282-6845

Edmonton Journal Nov 17/91 2 47

# Getty agrees to media e again in Lubicon claim

ROY COOK  
Journal Staff Writer

Edmonton

The Alberta government will again try to mediate a solution to the stalled Lubicon land claim in an effort to avoid a Dec. 1 showdown.

But if the attempt fails, Lubicon Lake Chief Bernard Ominayak says he's determined to press ahead with his threat to evict Petro-Canada from the band's traditional lands.

And he warned the RCMP that if they respond with heavy-handed tactics, it may backfire.

Ominayak met with Premier Don Getty for 2½ hours Thursday.

Following the meeting, Getty told reporters the two men and their advisers had reviewed Ottawa's final offer to the band.

"I agreed with the chief's view that the offer seems deficient in the area of providing economic stability for the future," Getty said.

While Ottawa has offered to build roads, sewers, community halls and other facilities, Getty said "if you don't also build into your planning the ability to have businesses, farms, the type of thing . . . that will allow you to get economic development out into the future, you're going to merely have a pocket of dependency."

Getty has instructed Attorney General Ken Rostad, who is responsible for native affairs, to meet with federal Indian Affairs Minister Pierre Cadieux in order to "close that economic development gap."

Ominayak and Getty are scheduled to meet again Nov. 28 to review possible progress.

Getty said during their meeting, the two men also reaffirmed the Grimshaw accord which they negotiated in October 1988.

Getty told reporters that in signing that deal, Ominayak had agreed to respect the laws of Alberta.

But Ominayak refused Thursday to say whether the band would honor that commitment in its jurisdictional battle with Ottawa.

Last year, prior to that accord, the band set up a blockade to press their land claim. The RCMP quickly dismantled it.

Prior to Thursday's meeting, Ominayak criticized the police for using "heavy-handed force against peaceful people who are not getting into any violent situations. It seems like the RCMP are wishing and trying to instigate violence in a lot of these cases."

Getty refused to say what action he would take if the Lubicons broke the law, calling it "hypo-



Brian Gavriloff The Journal

Chief Bernard Ominayak examines legislature portraits of former premiers Harry Strom, left, and Peter Lougheed

Ominayak insisted the band is serious about evicting Petro-Canada from its land Dec. 1 if there is no progress on the land claim.

"We can't afford to sit around and wait and wait for the federal government to come to the negotiating table or have the political will to settle," the chief said.

"In fact, what they've done so far is prevented settlement and kept stealing our resources.

"Until the federal government deals with us in a manner to our satisfaction, the title of those lands and resources are retained by the Lubicon people."

The band has not had any for-

eral government or the oil company.

Ominayak said he's pleased that Getty is trying to solve the dispute, but "to what degree he can influence the federal government, I don't know."

Meanwhile, members of Edmonton's Metis community held a ceremony on the steps of the Legislature Thursday to commemorate the 104th anniversary of the death of Louis Riel.

Butch Plante, framework coordinator for the Metis Association of Alberta, which organized the event, said ceremonies were also held simultaneously in Winnipeg, Regina and St. Boniface, Man.

The Edmonton Journal, Friday, November 3, 1989 A7

# Violence not ruled out, Lubicons warn Petro Can

## Getty says he was told laws wouldn't be broken

**DON THOMAS and  
RICHARD HELM**  
Journal Staff Writers

**Edmonton**

Lubicon Chief Bernard Ominayak won't rule out violence if Petro Canada doesn't comply with demands to obtain oil-field permits and pay the band royalties.

The federally-owned oil company is being targeted to pressure the federal government into increasing its terms for a land-claim settlement. They have until Dec. 1 to comply.

"If Petro Canada is preparing to continue stealing our resources . . . and the federal government isn't prepared to deal with our peoples' rights, then we've to do what it takes to stop them," Ominayak said Thursday.

"We can't sit back forever waiting for the federal government to make a move . . . we either bring this thing to a head, they either lock all our people up or shoot all our people.

"These are our lands, our resources, and we've got to try and do what is required to protect it."

He refused to say what action

the band might take, but said they would not instigate violence.

Petro Canada has two oil wells in the band's traditional area and shares production from 25 others.

Total production share is 900 barrels per day.

Ominayak said he hopes to talk with Premier Don Getty within the next week when band officials meet with provincial negotiators.

Getty has said Ominayak assured him that the band would not break Alberta laws.

Ominayak couldn't recall having made such an assurance.

"The fact is that under these conditions the Lubicon law will have to prevail within the Lubicon lands.

"We had an agreement that we've tried to finalize and I think both parties, the band and the Alberta government, have made great efforts to bring the third party in to resolve the matter.

"That hasn't been possible and we certainly didn't agree to be nice guys to one another just for the sake of being nice.

"I think that Getty would understand that there's been a lot of problems and as long as this thing

is dragged on by the federal government, something's going to have to be done."

Getty is convinced no laws will be broken in the latest Lubicon skirmish with Ottawa.

"We made the agreement with the Lubicons and the chief and I shook hands that on that agreement they would observe all the laws of Alberta," Getty said.

"When he shakes hands, he lives up to that, as I do, so I expect he'll continue to live up to the laws of Alberta."

But Getty added he is becoming "frustrated by the federal government's inability to work out an agreement."

Land claim negotiations ended in January when the band refused to accept a \$45-million package that included a 246-sq.-km reserve.

Meanwhile, the 18 Canadian Indian bands which have signed a mutual defence pact with the Lubicons will meet in Labrador Nov. 21 to discuss strategy.

Labrador's Innu, battling the federal government over low-level jet fighter training in their area, were among the first bands to sign the pact and will host the meeting.

# Lubicons threaten to evict Petro-Can

DON THOMAS  
Journal Staff Writer

Edmonton

The Lubicons have given Petro-Canada 30 days to get band permits and pay royalties for using traditional Indian lands or risk eviction.

The demands are in a letter dated Oct. 29 and sent Tuesday night to Prime Minister Brian Mulroney.

Permits must be obtained for all oil wells, flow lines, pipelines, roadways and related development that Petro-Canada owns directly or in partnership with other companies, the band says.

"In view of the fact that Canada doesn't seem to want to negotiate with the Lubicons, they are going to protect their jurisdiction on their traditional territory," says band lawyer James O'Reilly of Montreal.

If Petro-Canada doesn't meet the demands, "they will be considered as trespassers subject to eviction."

Band members — aided by 18 bands across Canada that have signed a Lubicon defence pact — may remove the oilfield equipment, says band adviser Fred Lenarson.

"The message here clearly is that in going after Petro-Canada it's not the province that is the problem; it's the federal government."

"If it were only up to the Lubicons and Premier Don Getty to settle, this would have been settled months ago."

Alberta Attorney General Ken Rostad said the next step appears to be Ottawa's, but the province won't ignore illegal activity.

Land claim negotiations ended in January when the band refused to accept a package including a 246-sq.-km reserve and \$45 million for housing, community facilities and economic development.

The Lubicons also want up to \$200 million in compensation for what they consider lost oil and gas revenues.

Petro-Canada has no intention of meeting the Lubicon demands, says company spokesman Sheila O'Brien of Calgary.

Federal government spokesman Ken Colby says Ottawa has made a "very fair offer" and it won't be increased.

## Getty, Ominayak meet to avoid showdown

DON THOMAS  
Journal Staff Writer

Edmonton

Premier Don Getty will meet today with Lubicon Chief Bernard Ominayak in an apparent bid to head off a Dec. 1 confrontation with Petro-Canada at Little Buffalo.

The Lubicons have given the Crown corporation until Dec. 1 to apply for retroactive permits and pay royalties on 27 oil wells it owns directly or in partnership on traditional Lubicon lands, about 250 km north of Edmonton and 80 km east of Peace River.

Ominayak has warned that unless the company complies, the wells could be dismantled and action could be taken against the

company's Calgary head office. There could also be a boycott of its gas stations.

The threatened action is part of tactics by the band to force the federal government to improve terms of its proposed land-claim settlement with the band.

Neither Petro-Canada nor the federal government have responded to the Lubicons' demands, said band spokesman Terry Kelly.

Ominayak was attending the annual meeting of the Union of B.C. Indian Chiefs in Vancouver Wednesday where he was invited to outline developments in the land-claim dispute.

Included in the 2:30 p.m. meeting at Getty's office today will be provincial negotiator and Calgary lawyer John McCarthy and Attorney General Ken Rostad.

## Lubicon talks sought

OTTAWA — Indian Affairs Minister Pierre Cadieux said yesterday northern Alberta's Lubicon band must return to the bargaining table if it wants to discuss its land claim.

Cadieux said he's taken note of last week's letter to Prime Minister Brian Mulroney from the Lubicons, in which Chief Bernard Ominayak threatened to dismantle Petro-Canada oil rigs on land claimed by the band.

But Cadieux showed no signs of giving in to the threats.

Ominayak said the Crown's oil company has until Dec. 1 to obtain operating permits from the band and make arrangements to start paying royalties.

If it fails to meet the deadline, the company's rigs will be dismantled and the band may also consider sabotaging Petro-Can gas stations, said Ominayak, who has refused to rule out the use of violence.

The Lubicons have been fighting for a land settlement for 50 years.

Talks with Ottawa broke off last January after the federal government made a "final offer" that would have given the band a 245-sq.-km reserve and a \$45-million aid and development package.

There was no allowance for compensation for lost oil and gas royalties — which the band says is worth at least \$200 million.

2 Nov 89 Edmonton Journal #1

Edmonton Sun  
619 - Nov 7/89

# Cynical treatment of the Lubicons

The current Lubicon Lake band council, including Chief Bernard Ominayak, was elected two months ago. It has the authority to negotiate the band's land claim with the federal government.

Unfortunately, the Mulroney government pays no regard to these democratic niceties. In the latest in a long series of disgraceful actions, it has taken the extreme step of creating a new Indian band, involving some Lubicon members, in order to divide the Lubicons and undermine the authority of their elected leaders. It will be Canada's 593rd Indian band — no big deal to Ottawa, but of critical importance to the Lubicons.

Ottawa, with its long record of cynical dealings with the Lubicons, now dares to hold up its hands in innocence. It is merely recognizing, it claims, the desire of some Lubicons (how many is uncertain) to accept a land claims settlement that Ominayak and other band negotiators have rejected.

From Ottawa's point of view, there seems to be no issue of legitimate representation, or of a legitimate aboriginal claim pursued over the decades. No, Ottawa will simply negotiate with a band of people — unelected — who apparently agree with Ottawa's position. The elected Lubicon representatives, meanwhile, have had no discussions with Ottawa since January when they rejected what Ottawa called its "final offer" in the 50-year-old land negotiation.

This is but the latest of several shabby tactics pursued by the Mulroney government in the Lubicon talks. Prime Minister Brian Mulroney himself, taking a rare election-time interest in the Lubicons, promised direct action by his office last November — and then washed his hands of the affair after the election. The Indian Affairs Department resorted to a mean-spirited campaign in January to smear Lubicon demands. Those are merely the low points in a depressing litany.

Alberta Premier Don Getty has acted honorably and sensibly in the protracted negotiations — perhaps because, unlike Ottawa, he sees where justice lies. Getty and Ominayak are making a joint effort once again to interest Ottawa in genuine negotiations. Alberta, acting in good conscience, has largely resolved issues affecting provincial lands and resources and the Lubicons.

None of these words — honor, justice or good conscience — can be applied to Ottawa's actions. The federal government has been mainly bullying — reflecting, perhaps, the central government's inability to conceive of a situation in which a small Cree band might stand on its own feet. That, after all, is what the traditionally independent Lubicons have been seeking.

No, Ottawa wants to play hardball — one of Mulroney's favored phrases. We might doubt his government's ability to play hardball in free-trade negotiations, or in fishing disputes with Europe. But we have no doubt at all that it is willing to play hardball with the Lubicons — to the shame of all Canadians.

ACC	KL	DATE
FILE	DOSSIER	
45-CDA-13-1-3 LUBICON LAKE BAND		

AC 13-1-3  
SUITE A DONNER

UNCLASSIFIED

FM STKHM UDGR1209 30NOV89

TO EXTOTT/IMH

INFO INAHULL/POTTER/WHITAKER/HUDSON

DISTR RWR RWP

---LUBICON INDIAN BAND NEGOTIATIONS:MTG WITH PRIVATE SWEDISH  
ORGANIZATION

EMBASSY RECEIVED DELEGATION FROM SWEDISH CHAPTER OF QUOTE FOURTH  
WORLD ASSOCIATION UNQUOTE.GROUP PRESENTED A SERIES OF PAPERS AND  
ARTICLES OUTLINING CONCERNS OVER DEADLOCK IN NEGOTIATIONS  
BETWEEN LUBICON AND FEDERAL GOVT.

2.DELEGATIONS PRIMARY CONCERN SEEMED TO BE FEAR THAT FAILURE TO  
REACH AGREEMENT BY 01DEC DEADLINE SET BY LUBICON COULD LEAD TO  
CONFRONTATION AND VIOLENCE.GROUP WAS ASSURED THAT CONCERNS  
WOULD BE NOTED AND PASSED TO APPROPRIATE PERSONS IN OTT.MATERIALS  
LEFT WITH EMB WILL BE FORWARDED TO IMH ONLY,BY NEXT BAG.

3.GRATEFUL YOU KEEP MISSION INFORMED ON DEVELOPMENTS AND PROVIDE  
PRESS LINE SHOULD CONFRONTATION OCCUR.

UUU/224 010956Z UDGR1209

Government  
of CanadaGouvernement  
du CanadaAccess to Information Act  
Loi sur l'accès à l'information  
**ACTION REQUEST** **FICHE DE SERVICE**

To - À

Date

Time - Heure

From - De

Telephone No - N° de téléphone

Extension - Poste

☐ Please Call      ☐ Returned your call      ☐ Will call again      ☐ Wants to see you  
 Prière d'appeler      Vous a rappelé      Vous rappellera      Désire vous voir

☐ Action      ☐ Approved      ☐ Note and return  
 Donner suite      Approbation      Noter et retourner

☐ Comments      ☐ Draft reply      ☐ Note and forward  
 Commentaires      Projet de réponse      Noter et faire suivre

☐ As requested      ☐ Signature      ☐ Note and file  
 Comme demandé      Noter et classer

File no. - N° de dossier

Message taken by - Message reçu par

*John Holmes*  
*will speak*  
*now*



Department of Justice  
Canada

Ministère de la Justice  
Canada

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REQUESTED BY - DEMANDÉ PAR

Irit Weiser

REQUESTED FOR - DEMANDÉ POUR

November 6, 1989

SECTION

Human Rights Law Section

TEL. - TÉL.

957-4937

AUTHORIZED BY - AUTORISÉ PAR

Irit Weiser

Nov. 6, 1989

DOCUMENT TITLE - TITRE DU DOCUMENT

Communication of the Lubicon Lake Band to the  
UN - Human Rights Committee under the Optional

SPECIAL INSTRUCTIONS - INSTRUCTIONS SPÉCIALES

Protocol

SEND TO - ENVOYER À

Fred Caron - Fax 957-5750

Michael Hudson - Fax 997-1587

Marilyn Whitaker - Fax 953-6430 (days)  
953-9027 (nights)

Bob Coulter - Fax 997-1587

D. Brisco - fax 952-7642

Ken Boutellier - Fax (403) 425-0307  
John Holmes # 990-8688

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P.1/5

NOV 06 '89 17:33 DEPT OF JUSTICE OTTAWA #1



MEMORANDUM/NOTE DE SERVICE

Security Classification - Cote de sécurité
File number - numéro de dossier  295310-3
Date  November 6, 1989

TO/A: Distribution

FROM/DE: Counsel  
Human Rights Law Section

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

Comments/Remarques

We were advised last week by the UN Human Rights Centre that the Committee might accept a further submission from Canada on the above-noted matter, provided the submission was characterized as an addendum or clarification to our September 1, 1989 submission (and not as a response to the most recent Lubicon document). Our submission must be very short (3-4 pages) and must be received in Geneva by November 8, 1989.

Accordingly, I am enclosing for your review a draft submission, I would appreciate your comments as soon as possible.

Thank you for your assistance.

*Irit Weiser*  
Irit Weiser

ACC	REF	DATE
FILE	45-CDA-13-1-3-	
Lubicon Lake Band		

Distribution: Fred Caron - Fax: 957-5750  
Michael Hudson - Fax: 997-1587  
Marilyn Whitaker - Fax: 953-6430 (days)  
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Ken Boutellier - Fax: (403) 425-0307  
Ivan Whitehall - Room: 325  
John Holmes - Fax: 990-8688

c.c. D. Martin Low

IW/mm

**CLARIFICATION OF THE SUBSTANTIVE COMMENTS OF THE  
GOVERNMENT OF CANADA ON THE COMMUNICATION OF CHIEF  
BERNARD OMINAYAK AND THE LUBICON LAKE BAND**

---

The Government of Canada wishes to submit additional comments pursuant to article 4(2) of the Optional Protocol, clarifying certain issues raised in Canada's submission of September 1, 1989.

**I. FAIR DEALINGS OF THE LUBICON CLAIMS BY THE CANADIAN COURT SYSTEM**

As noted in the September 1, 1989 submission on page 4 and the chronology of judicial proceedings, the responsibility for delays in the resolution of the Band's court actions lies largely with the Band itself. Not only has it not taken the necessary steps to move forward actions which it commenced but it refused to cooperate with the federal government action which was commenced in an attempt to resolve matters. During this period, Canada provided the Band with \$1.5 million for legal and other expenses in presenting its claim. As this was an ex gratia payment, Canada could not specify whether these funds would be applied to past or future legal expenses. While there were efforts at negotiations during which some litigation was held in abeyance, these periods of time were not protracted and can not explain delays lasting years.

The constitutional division of powers in Canada between federal and provincial governments and the respective jurisdictions of courts has to be borne in mind when assessing judicial proceedings with respect to the Lubicon Lake Band. It is important to note that where provincially-owned lands are claimed (as in the Lubicon case), the Supreme Court of Canada has ruled that such claims must be brought against provincial governments in provincial courts. This is because it is only the province that is able to provide land, should a court so rule.

The importance of the Supreme Court of Canada's ruling is that it clearly defines the proper venue for the Band's claim to aboriginal rights to land. Failure by the Band's lawyers to initiate proceedings in the appropriate courts does not mean that Canadian courts are unwilling or unable to provide a fair hearing of their claims.

**II. CONFUSION ABOUT THE MEANING OF ABORIGINAL RIGHTS VERSUS TREATY RIGHTS TO LAND HINDERS UNDERSTANDING OF PROPOSED SOLUTIONS**

In Canada, Indian treaty rights flow from a number of treaties which were negotiated and signed between the government and Indians within certain areas of Canada. In exchange for the certain promises to provide land conferred by treaties, Indians ceded all their rights to lands which they historically inhabited. In the

case of the Lubicon Indians, they reside within the boundaries of Treaty 8, which was entered into with the Cree and other Indians of the area in 1899. The Lubicon lake Band is considered by the Government of Canada to have exchanged its original aboriginal rights to land for the benefits of the treaty. While this at one time was challenged by the Lubicon in court, the action was subsequently abandoned by the Band.

However, the Band does have rights under Treaty 8. These rights form the basis of the offers of the Canadian and Albertan governments to the Band. The 247 square kilometres of land (95 square miles) offered by the province of Alberta under the Grimshaw agreement and agreed to by the federal government for the establishment of a reserve, is related to the treaty provisions. It is in this area that special measures have been taken in recent years to ensure that oil and gas are not extracted and lumbering does not occur.

The 10,000 square kilometre area mentioned by the Band in its communications relates to an aboriginal claim, which is not recognized by the Canadian government. Complaints by the Band regarding continuing oil extraction or possible lumbering refer to activities on this wider territory - not on lands identified in proposed agreements between the Band and provincial and federal governments. It should also be noted that other communities, including native communities, use this large area so that the Lubicon Lake Band cannot rightly claim exclusive use.

### III. THE BAND'S HUNTING AND TRAPPING LIFESTYLE HAS NOT BEEN DESTROYED

The area where members of the Lubicon Lake band have historically hunted and trapped is largely covered by natural forest. This includes areas identified for the Band's reserve as well as broader areas. It is acknowledged that in this broader area, a small percentage of land has been disturbed by oil and gas activity and much of the area is covered by timber leases. Nevertheless, the forest generally remains intact and capable of supporting an animal population sufficient to allow those members of the Lubicon Lake Band who wish to engage in traditional lifestyle to do so. When timber harvesting begins in this broader area, only a small portion will be logged at any time so as to permit regrowth of the forest. It should also be mentioned that forest disturbance usually leads to an augmentation in the population of the larger mammals since it results in increased food available in open areas.

- (add description of wildlife management agreement)

When taken together, the offers by both governments to resolve the Lubicon claim are comprehensive and generous. The nature and extent of these offers is well documented in previous submissions. Most recently, on September 8, 1989, Canada amended its offer to expressly reserve for the Band its right to sue for compensation,

and to provide \$10 million in cash to the Band for economic development purposes. It is also important to note that these offers are structured so that members of the Band have the opportunity to pursue either a meaningful traditional lifestyle or to participate in the modern Canadian economy.

V. VOLUNTARY EMERGENCE OF THE WOODLAND CREE BAND AND GOVERNMENT RESPONSE TO ITS REQUESTS

Members of the Woodland Cree Band generally reside in the same communities as do members of the Lubicon Lake Band. They and their ancestors have done so for at least as long as have members of the Lubicon Lake Band. Indeed, there is a high degree of interrelationship among members of both Bands.

A minority of persons wishing to join the Woodland Cree Band were at various times included within the membership of the Lubicon Lake Band. Some have left the Lubicon Lake Band voluntarily while about 30 others were expelled by that Band last year.

As outlined in previous submissions, members of the Woodland Cree Band petitioned Canada for recognition much in the same manner as did members of the Lubicon Lake Band prior to its creation during the 1980s. The Woodland Cree Band was created by Canada because at least some of its members have entitlements to land, pursuant to Treaty 8, which they wish to take in common, and a "band" entity is the only mechanism through which this can occur.

Canada would like to stress that creation of the Woodland Cree Band was done only at the request of those who sought recognition so that their desire to live collectively would be possible. Canada would also like to stress that the Woodland Cree Band has not claimed any lands sought by the Lubicon Lake Band. It should be noted, however, that the Lubicon Lake Band does not, nor has it ever, enjoyed a monopoly in respect of the lands it claims as its "traditional territory" to the exclusion of all other Native peoples residing in the same general area, including the Woodland Cree.

34  
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Legal Operations Division (JLO)  
Direction des Opérations juridiques

ACTION  
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FM GENEV YTGR6682 08NOV89

TO EXTOTT JLO

45-CDA-13-1-3  
-LUBICON LAKE BAND

INFO PRMNY JUSOTT/LOW/WEISER/FREEMAN INAHULL/WHITAKER/COULTER/HUDSON  
FPROOTT/CARON

DISTR JFB JCD IMD IMH

REF YOURFAX JLO2033 07NOV

---UN HUMAN RIGHTS CTTEE:COMPLAIN BY LUBICON LAKE BAN

THREE-PAGE SUBMISSION QUOTE LAFYING CANADAS 01SEP89 RESPONSE

UNQUOTE FORWARDED TO CHR/MOLLER THIS DATE UNDER COVER OF MISSION  
NOTE NUMBER 6681/89.

2.AMENDED TEXT,AS PROVIDED OVER TELEPHONE BY HOLMES TO STEFANIK THIS  
PM,WAS INCORPORATED.FINAL SENTENCE OF PAGE ONE QUOTE CANADIAN  
CONSTITUTIONAL LAW PROVIDES THAT THE GOVERNMENT COULD DEMONSTRATE  
ITS INTENTION TO EXTENGUISH ABORIGINAL CLAIMS IN AREAS COVERED BY  
TREATIES UNQUOTE WAS REMOVED AND REPLACED BY QUOTE UNDER CANADIAN  
CONSTITUTIONAL LAW,ABORIGIL RIGHTS CAN BE EXTINGUISHED AND REPLACED  
BY TREATY RIGHTS.UNQUOTE.

UUU/025 081557Z YTGR6682



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NON CLASSIFIED MESSAGE

Accession/Référence

File/Dossier

45-CDA-B-1-3

-LUBICON LAKE BAND

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

SECURITY  
SÉCURITÉ

UNCLASSIFIED

**F A X**

7 NOV 89 22 27z<sub>12</sub>

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FM/DE

FM EXTOTT JLO-2033 7NOV89

TO/À

TO GENEV DELBY 080900

## INFO

INFO PRMNY JUSTOTT/LOW/WEISER/FREEMAN

REF

DIANDHULL/WHITAKER/COULTER/HUDSON FPROOTT/CARON DE

SUBJ/SUJ

DISTR JEB JCD IND IMN

REF YOURTEL YTGR 6648 01NOV

---UN HUMAN RIGHTS CTTEE:COMPLAINT BY LUBICON LAKE BAND

ATTACHED IS LATEST CDN SUBMISSION CONCERNING SUBJ COMPLAINT.YOU

WILL RECALL FROM REFTTEL THAT HYNES AND JUSTOTT/LOW HAD UNDERTAKEN

TO FORWARD BRIEF NEW SUBMISSION CLARIFYING 01SEP89 CDN RESPONSE

TO CENTRE OFFICIAL MOLLER BY MIDDLE OF THIS WEEK.GRATEFUL

THEREFORE YOU PREPARE COVERING NOTE AND SUBMIT BY HAND TO MOLLER

ASAP.YOUR ASSISTANCE APPRECIATED.

COMM CENTRE: PLEASE FAX WITH ATTACHED THREE PAGES

DRAFTER/RÉDACTEUR

#### DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

JOHN HOLMES

SIG

TLO

996-5407

ROBERT / ROCHON / TB

SIG

003435

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2/4

CLARIFICATION OF THE SUBSTANTIVE COMMENTS OF THE  
GOVERNMENT OF CANADA ON THE COMMUNICATION OF CHIEF  
BERNARD OMINAYAK AND THE LUBICON LAKE BAND

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The constitutional division of powers in Canada between federal and provincial governments and the respective jurisdictions of courts has to be borne in mind when assessing judicial proceedings with respect to the Lubicon Lake Band. It is important to note that where provincially-owned lands are claimed (as in the Lubicon case), the Supreme Court of Canada has ruled that such claims must be brought against provincial governments in provincial courts. This is because it is only the province that is able to provide land, should a court so rule.

The importance of the Supreme Court of Canada's ruling is that it clearly defines the proper judicial forum for the Band's claim to aboriginal rights to land. Failure by the Band's lawyers to initiate proceedings in the appropriate courts does not mean that Canadian courts are unwilling or unable to provide a fair hearing of their claims.

**II. CONFUSION ABOUT THE MEANING OF ABORIGINAL RIGHTS VERSUS TREATY RIGHTS TO LAND HINDERS UNDERSTANDING OF PROPOSED SOLUTIONS**

In Canada, Indian treaty rights flow from a number of treaties which were negotiated and signed between the government and Indians within certain areas of Canada. Canadian constitutional law provides that the government could demonstrate its intention to extinguish aboriginal claims in areas covered by treaties.

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However, where such extinguishment occurred, bands like the Lubicon have an opportunity to claim benefits under these treaties. In the case of the Lubicon Indians, they reside within the boundaries established by Treaty 8, which was entered into with the Cree and other Indians of the area in 1899. 3/6

The Canadian government acknowledges that the Lubicon Lake Band has a valid claim to benefits under Treaty 8. These rights form the basis of the offers of the Canadian and Albertan governments to the Band. The 247 square kilometres of land (95 square miles) offered by the province of Alberta under the Grimshaw agreement and agreed to by the federal government for the establishment of a reserve, is related to the treaty provisions. It is in this area that special measures have been taken in recent years to ensure that oil and gas are not extracted and lumbering does not occur.

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As outlined in previous submissions, members of the Woodland Cree Band petitioned Canada for recognition much in the same manner as did members of the Lubicon Lake Band prior to its recognition during the 1930s. The Woodland Cree Band was recognized by Canada because at least some of its members have entitlements to land, pursuant to Treaty 8, which they wish to take in common, and a "band" entity is the only mechanism through which this can occur.

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P R O T E C T E D

GENEV YTGR6648 01NOV89

TO EXTOTT JLO DELIVER BY 011500

INFO BH JUSTOTT/LOW/FREEMAN/WEISER DE OTT INAHULL/WHITAKER/COULTER/  
HUDSON DE OCI FPROOTT/CARON DE OPM

DISTR JFB JCD IMD IMH

REF YOURTEL JLO1905 25OCT

FILE	DOSSIER
45-COA-13-1-3	
Lubicon Lake Band	

---UN HUMAN RIGHTS CTTEE:COMPLAINT BY LUBICON LAKE BAND

HYNES, ACCOMPANIED BY JUSTOTT/LOW, DISCUSSED THIS MATTER TODAY WITH  
CENTRE FOR HUMAN RIGHTS/MOLLER ON BASIS OF POINTS RAISED IN YOUR  
REFTEL. MOLLER CONFIRMED THAT, IN VIEW OF SUBSTANTIAL VOLUME OF  
MATERIAL FILED BY PARTIES TO DISPUTE JUST PRIOR TO CURRENT SESSION,  
IT HAD NOT BEEN POSSIBLE TO PROCESS (TRANSLATE AND PRINT) ALL RELEVANT  
DOCUMENTATION FOR PRESENT SESSION. CONSEQUENTLY NO SUBSTANTIVE  
DECISION COULD BE EXPECTED TO EMERGE FROM CTTEE DELIBERATIONS THIS  
MONTH.

2. THERE WAS, ON OTHER HAND, POSSIBILITY THAT CTTEE WOULD DECLARE  
LUBICON DOSSIER COMPLETED AND CLOSED-AND SUCH A DECISION COULD BE  
DEFINITELY ANTICIPATED IF SECRETARIAT PRESSED IDEA. HOWEVER, APPRECI-  
ATING CONCERNS WE HAD RAISED, MOLLER SAID HIS INCLINATION WOULD NOT  
BE TO ENCOURAGE SUCH A STEP.

3. CONCERN TO BRING EXCHANGE OF WRITTEN PLEADINGS TO AN END WAS  
NEVERTHELESS A REAL ONE, AND TO THIS END HE SUGGESTED FOLLOWING  
SCENARIO: LIF CDN GOVT COULD SUBMIT A BRIEF ADDITIONAL SUBMISSION

...2

PAGE TWO YTGR6648 PROTECTED

BEFORE END OF CURRENT SESSION(IE BY MIDDLE OF NEXT WEEK AT LATEST),  
CTTEE MIGHT BE CONVINCED, IN HAVING NEW MATERIAL TRANSMITTED TO  
AUTHOR OF COMPLAINT, TO SET A ONE MONTH DEADLINE FOR RECEIPT OF ANY  
COMMENTS ON NEW GOVT SUBMISSION. IF IT COULD BE ASSUMED THAT CDA WOULD  
SEE WE NEED TO MAKE FURTHER SUBMISSION, THEN SECRETARIAT WOULD BE  
IN GOOD POSITION TO PREPARE NECESSARY ANALYSIS AND/OR RECOMMENDA-  
TIONS FOR CTTEE TO ADDRESS CASE AT ITS NEXT SESSION(MAR-APR1990).  
(MOLLER APPRECIATED WE COULD NOT GUARANTEE THERE WOULD BE NO FURTHER  
GOVT SUBMISSIONS, BUT EXPRESSED CONFIDENCE THAT WE WOULD EXERCISE  
AS MUCH RESTRAINT AS POSSIBLE).

4. IF THIS APPROACH MEETS WITH YOUR AGREEMENT, OUR SUBMISSION SHOULD  
BE EXPRESSLY CHARACTERIZED AS QUOTE AN ADDITIONAL SUBMISSION  
PURSUANT TO ARTICLE 4(2) OF THE OPTIONAL PROTOCOL UNQUOTE. THIS WOULD  
PROVIDE CTTEE WITH PRETEXT, PURSUANT TO ITS RULES OF PROCEDURES, FOR  
SETTING SPECIFIC DEADLINE FOR COMMENTS BY AUTHOR. (IF, ON OTHER HAND,  
OUR SUBMISSION WERE MERELY STYLED AS COMMENTS ON LUBICON SUBMISSION  
12, CTTEE WOULD NOT NORMALLY INVITE ANY FURTHER COMMENTS FROM LUBICON.  
IN CONSEQUENCE, NO FIXED DEADLINE COULD BE SET-LEAVING OPEN POSSIBI-  
LITY THAT LUBICON WOULD TAKE INITIATIVE OF REOPENING WRITTEN EXCHAN-  
GES ON EVE OF NEXT CTTEE SESSION).

5. WE WILL BE CONTACTING YOU BY PHONE TODAY TO DISCUSS THIS MATTER  
FURTHER.

CCC/034 011740Z YTGR6648

OF : DES NATIONS UNIES A GENÈVE



UNITED NATIONS OFFICE AT GENEVA

CENTRE POUR LES DROITS DE L'HOMME

CENTRE FOR HUMAN RIGHTS

Téléfax: (022) 733 98 79

Télégrammes: UNATIONS, GENÈVE

Télex: 28 98 98

Téléphone: 734 80 11 73102 11

REF. N°: G/SO 215/51 CANA (38)

(à rappeler dans la réponse)

167/1984

UNCLAS / NONCLAS

YT 6628

PAGE 2 OE/DE 12

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Palais des Nations CH-1211 GENEVE 10	
ACC 626024	REF OE/DE
FILE	DOSSIER
UNCLAS / NONCLAS	
45-CDA-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 has the honour to transmit herewith, for information and in order to complete the files of the State party, a copy of a submission dated 20 October 1989, supplementing Supplement No. 12, concerning communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), which is before the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

20 October 1989

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GVA / SKMGVA / NYK  
GVA / BRU  
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PAGE 1 OF/DE 12

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OCT 31 1989

Legal Operations Division (JLO)  
Direction des Opérations juridiques*fu*---UN HUMAN RIGHTS CTTEE: LUBICON LAKE BAND

ATTACHED IS FURTHER SUBMISSION OF LUBICON COUNSEL

30 OCT 89 18:03 Z

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30 OCT '89 17:08 MISSION DU CANADA +4122 7347919

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VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

A PROFESSIONAL CORPORATION

1080 THOMAS JEFFERSON STREET, N.W.

SEVENTH FLOOR

WASHINGTON, D. C. 20007

(202) 298-1800

FACSIMILE

(202) 338-2361

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WRITE DIRECT DIAL NUMBER

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HOWARD J. FELDMAN  
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ARTHUR JOHN ARMSTRONG  
CYNTHIA INGERSOLL  
NOT A PARTNER IN FIRM OF COLUMBIA

Date: 20 Oct 89

Time: UNCLAS / NONCLAS

YT 16628

PAGE 3 OF/DE 12

TO: Jakob Moller

FIRM: U.N. Center for Human Rights

CITY & STATE: Geneva Switzerland

TELECOPIER NUMBER: 011-41-22-73398-79

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October 20, 1989

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OF COUNSEL  
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NOT ADMITTED TO PRACTICE IN CANADA

Mr. Jakob Th. Moller  
Chief, Communications Unit  
Center for Human Rights  
United Nations Office  
CH-1211 Geneva 10  
Switzerland

UNCLAS / NONCLAS  
YT 6628  
PAGE 7 OF/DE 12

RE: Communications No. 167/1984

Dear Mr. Moller:

Thank you for your recent transmittal of Canada's 22 June 1989 submission to the United Nations Committee on Human Rights. Please note that page 2 of the submission was not received. Please note also that the Band was not previously provided a copy of this submission and therefore was not given the opportunity to respond specifically to the points asserted by Canada in the submission.

Upon review of Canada's 22 June submission, it appears that these points are addressed in the Band's past submissions to the Committee and in its 2 October 1989 submission in response to Canada's 31 August and 28 September 1989 submissions. In particular:

\* with respect to Canada's discussion of its "settlement offer, please see the Band's Supplement No. 10, 22 March 1989 and pages 12 - 14 of the Band's 2 October submission;

\* with respect to Canada's discussion of domestic court actions concerning the Band's claim, please see pages 4 - 11 of the Band's 22 October submission;

\* with respect to Canada's assertion that it is unaware of the Articles of the Covenant underlying the Band's claim, please see pages 2 - 4 of the Band's 2 October submission.

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VAN NISS, FELDMAN, SUTCLIFFE &amp; CURTIS

While the Band has addressed these points in response to other of Canada's submissions, the Band must protest any reliance on the 22 June 1989 submission by Canada since the Band was not provided the opportunity for specific rebuttal.

With respect to the Band's Supplement No. 12, 2 October 1989, the Band would like to supplement the information provided there with the attached materials.

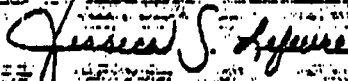
Attachment 1 to this letter is a copy of a cover memorandum explaining the Band's position on outstanding settlement issues, provided to the Canadian Government on 7 September 1989 and included as Attachment 8 to the Band's 2 October 1989 submission to the Committee. The cover memorandum was not included with the 2 October submission and should be added to attachment 8 of that submission.

Attachment 2 to this letter is a copy of two newspaper articles which provide further insight into Woodland Cree situation and the attempt to reinvolve the federal government in negotiations last September.

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

Please contact me if you have any questions with respect to this communication.

Yours truly,

  
Jessica S. LafaveJSL/sks  
Attachments

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OE/DE 1

REITERATION OF LUBICON POSITION ON OUTSTANDING SETTLEMENT ISSUES  
(September 07, 1989)

On January 24, 1989, representatives of the Canadian Government prematurely terminated Lubicon land negotiations with a surprise "take-it-or-leave-it" settlement offer which they knew in advance was unacceptable since it made absolutely no provision for the Lubicon people to once again become socially and economically self-sufficient. Representatives of the Canadian Government then further demonstrated their complete lack of good faith by falsely claiming that their so-called "settlement offer" provided basic settlement items which it demonstrably did not include, such as a community hall and medical centre.

Over time the notable discrepancies between the public description and actual contents of the Canadian Government's so-called "settlement offer" have proven painfully embarrassing to the Canadian Government. In this context, and in light of the fact that the Lubicon position on settlement issues has already been provided and repeatedly explained in great detail to representatives of the Canadian Government, it is clear that the Canadian Government's current request for yet another reiteration of the Lubicon position on settlement issues is not a sincere effort to facilitate negotiations, but is rather only a transparent device to eliminate embarrassing discrepancies between the so-called offer and the public description of it by representatives of the Canadian Government.

Canadian Government reaction to yet another reiteration of the Lubicon position on settlement issues is therefore easily predictable and will consist only of "fine tuning" those sections of the so-called offer which are obviously inconsistent with Canadian Government claims about what the so-called offer contains. Actually providing basic settlement items which representatives of the Canadian Government have been falsely claiming were included all along will perhaps make the Canadian Government less vulnerable

criticism, but it will not provide what is required to achieve a settlement of Lubicon land rights. Lubicon land rights will only be settled when Canadian Prime Minister Brian Mulroney instructs his representatives to sincerely seek a negotiated settlement of Lubicon land rights, rather than continuing his current campaign of trying to outsmart, outmaneuver, outlast and thus defeat the Lubicon people.

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Ottawa Citizen, Friday, September 28, 1989

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12

The Lubicon have been discussing their 58-year-old land claim dispute with provincial representatives since Aug. 22.

Provincial spokesman Lesley Grosow said Alberta wants to keep negotiations with the Lubicon alive, but admitted without federal participation talks can go only so far.

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# Cynical treatment of the Lubicons

The current Lubicon Lake band council, including Chief Bernard Ominayak, was elected two months ago. It has the authority to negotiate the band's land claim with the federal government.

Unfortunately, the Mulroney government pays no regard to these democratic niceties. In the latest in a long series of disgraceful actions, it has taken the extreme step of creating a new Indian band, involving some Lubicon members, in order to divide the Lubicons and undermine the authority of their elected leaders. It will be Canada's 393rd Indian band — no big deal to Ottawa, but of critical importance to the Lubicons.

Ottawa, with its long record of cynical dealings with the Lubicons, now dares to hold up its hands in innocence. It is merely recognizing, it claims, the desire of some Lubicons (how many is uncertain) to accept a land claims settlement that Ominayak and other band negotiators have rejected.

From Ottawa's point of view, there seems to be no issue of legitimate representation, or of a legitimate aboriginal claim pursued over the decades. No, Ottawa will simply negotiate with a band of people — unelected — who apparently agree with Ottawa's position. The elected Lubicon representatives, meanwhile, have had no discussions with Ottawa since January when they rejected what Ottawa called its "final offer" in the 50-year-old land negotiation.

This is but the latest of several shabby tactics pursued by the Mulroney government in the Lubicon talks. Prime Minister Brian Mulroney himself, taking a rare election time interest in the Lubicons, promised direct action by his office last November — and then washed his hands of the affair after the election. The Indian Affairs Department resorted to a mean-spirited campaign in January to smear Lubicon demands. Those are merely the low points in a depressing litany.

Alberta Premier Don Getty has acted honorably and sensibly in the protracted negotiations — perhaps because, unlike Ottawa, he sees where justice lies. Getty and Ominayak are making a joint effort once again to interest Ottawa in genuine negotiations. Alberta, acting in good conscience, has largely resolved issues affecting provincial lands and resources and the Lubicons.

None of these words — honor, justice or good conscience — can be applied to Ottawa's actions. The federal government has been mainly bullying — reflecting, perhaps, the central government's inability to conceive of a situation in which a small Cree band might stand on its own feet. That, after all, is what the traditionally independent Lubicons have been seeking.

No, Ottawa wants to play hardball — one of Mulroney's favored phrases. We might doubt his government's ability to play hardball in free-trade negotiations, or in fishing disputes with Europe. But we have no doubt at all that it is willing to play hardball with the Lubicons — to the shame of all Canadians.

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# Govt. no-show torpedoes talks with Lubicons

EDMONTON (CP) — Long-delayed talks between the federal government and Alberta's Lubicon Indian broke down again Thursday — before they even got started.

The federal government and the 112-member Cree band were to meet for the first time since negotiations broke down in January when the federal government tabled a final offer to the band.

But Lubicon adviser Fred Leeson said federal negotiators never arrived in Thursday's meeting, arranged through Alberta negotiators. Leeson said the band had objected to the presence of federal spokesman Ron Colby.

Leeson said if the federal government invited Colby, whom he called a "public media adviser," to the talks, then the meeting should be open to all reporters.

"In the meetings they should either be no media at all, or all the media should be invited," Leeson said. "The band should not be in the position of simply having their own paid professional propagandist in there and then have everyone else out."

Federal negotiators met briefly with the province Thursday morning, but did not show up for an afternoon meeting with both Lubicon

and provincial representatives.

Colby insists he is a full-fledged member of the federal negotiating team and says the federal government won't negotiate with the Lubicon in public.

"This is all silly," Colby said Thursday. "Participation in negotiations... I have a very strong background in negotiations."

"I'm not a working member of the media, and I haven't been for 14 years."

Colby, who runs a financial relations and public affairs management firm in Calgary, said he is no more a public relations man than Leeson.

"I'm as parallel to Mr. Leeson," he said.

He said as long as the Lubicon insist on keeping him out of the talks, the federal government will stay away from the negotiating table. "If he (Leeson) wants a media adviser then we won't play."

The Lubicon have been discussing their 10-year-old land claim dispute with provincial representatives since Aug. 28.

Provincial spokesman Lindsey Grouse said Alberta wants to keep negotiations with the Lubicon alive but admitted without federal participation talks can go only so far.

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PAGE 11 OF 12

**Govt. no-show torpedoes talks with Lubicons**

The Ottawa Citizen, Friday, September 8, 1989

EDMONTON (CP) -- Long-delayed talks between the federal government and Alberta's Lubicon Indians broke down again Thursday -- before they even get started.

The federal government and the 525-member Cree band were to meet for the first time since negotiations broke down in January when the federal government tabled a final offer to the band.

But Lubicon advisor Fred Lennarson said federal negotiators never arrived at Thursday's meeting, arranged through Alberta negotiators. Lennarson said the band had objected to the presence of federal spokesman Ken Colby.

Lennarson said if the federal government brought Colby, whom he called a "private media advisor" to the talks, then the meeting should be open to all reporters.

"In the meetings there should either be no media at all, or all the media should be invited," Lennarson said. "The feds should not be in the position of simply having their own paid professional propagandist in there and then have everyone else out."

Federal negotiators met briefly with the province Thursday morning, but did not show up for an afternoon meeting with both Lubicon and provincial representatives.

Colby insists he is a full-fledged member of the federal negotiating team and says the federal government won't negotiate with the Lubicons in public.

"This is all silly," Colby said Thursday. "I participate in negotiations...I have a very strong background in negotiations."

"I'm not a working member of the media, and I haven't been for 18 years".

Colby, who runs a financial relations and public affairs management firm in Calgary, said he is no more a public relations man than Lennarson.

"I'm the parallel to Mr. Lennarson," he said.

He said as long as the Lubicon insist on keeping him out of the talks, the federal government will stay away from the negotiating table. "If he (Lennarson) wants a media circus then we won't play."

Ottawa Citizen, Friday, September 08, 1989

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The Lubicon have been discussing their 35-year-old land claim dispute with provincial representatives since Aug. 22.

Provincial spokesman Lesley Grosow said Alberta wants to keep negotiations with the Lubicon alive, but admitted without federal participation talks can go only so far.



External Affairs  
Canada

Affaires extérieures  
Canada

MESSAGE

Accession/Référence <b>626026</b>
File/Dossier <b>45-CDA-13-1-3-LUBICON LAKE BAND</b>

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OCT 30 1989

Legal Operations Division (JLO)  
Direction des Opérations juridiques

---UN HUMAN RIGHTS CTTEE:COMPLAINT BY LUBICON LAKE BAND

FOLLOWING INFO IS FOR USE BY HYNES DURING MTG NEXT WEEK WITH  
CENTRE OFFICIAL MOLLER CONCERNING SUBJ AND OTHER COMPLAINTS  
AGAINST CDA.

2.LATEST LUBICON SUBMISSION HAS BEEN EXAMINED AND DISCUSSED WITH  
INTERDEPARTMENTAL CONTACTS AS TO POSSIBLE FUTURE COURSE.CONTACTS  
AGREE THAT IN YOUR MTG WITH MOLLER YOU SHLD STATE THAT CDA HAS  
CONCERNS WITH NBR OF ALLEGATIONS AND FACTUAL INTERPRETATIONS  
PROFFERED BY LUBICON.FOLLOWING POINTS SHLD BE SPECIFICALLY  
HIGHLIGHTED:(A)LUBICON CLAIM(AND SUBMISSIONS)IS NOT CLEAR WHETHER  
IT IS BASED ON TREATY RIGHTS OR ABORIGINAL RIGHTS.LUBICON HAVE  
ALTERNATELY CLAIMED CERTAIN RIGHTS BASED ON TREATY AND RIGHTS  
BASED ON ABORIGINAL TITLE,THEREBY MAKING IT MORE DIFFICULT FOR  
CDA TO RESPOND TO(AND HRC TO UNDERSTAND)NATURE OF COMPLAINT.(B)  
CDA CONTINUES TO TAKE ISSUE WITH LUBICON ASSERTION THAT NO/NO

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVE

JOHN HOLMES/tb

SIG

JLO

996-5407

SIG

ROBERT ROCHON

003453

PAGE TWO JL01905 PROTECTED

COURT IN CDA IS COMPETENT TO ADDRESS AND ADJUDICATE THIS CLAIM.(C)LUBICON STATEMENTS RELATING TO WOODLAND CREE BAND ARE UNFOUNDED.WOODLAND BAND MEMBERS VOLUNTARILY CAME FORWARD TO ORGANIZE AND APPLY FOR BAND STATUS.

3.APPRECIATE THAT SECRETARIAT AND HRC MEMBERS MAY BE ANXIOUS TO CLOSE FILE ON LUBICON CASE AND COME TO FINAL DECISION.HOWEVER, BELIEVE THAT IT MAY BE NECESSARY(ONE MORE TIME)TO TRY AND SET RECORD STRAIGHT IN RESPECT OF CERTAIN ALLEGATIONS MADE IN LATEST LUBICON SUBMISSION.GRATEFUL,THEREFORE,YOU APPRISE MOLLER OF ABOVE CONCERNS AND INDICATE THAT CONSIDERATION IS BEING GIVEN TO POSSIBLE FURTHER CDN SUBMISSION.

TELEX / FAX COMMUNICATION FORM  
FORMULAIRE DE COMMUNICATION POUR FAX / TELEX

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From - De		Martha Reeve		<i>u.c.1</i>
Branch - Direction Policy & Constitution		Division Constitution		Program Code - Code de programme Self-Government
Director General - Directeur général Marc Lafrenière		Director - Directeur Marilyn Whitaker		Return to room no. - Retourner à la pièce

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Martha Reeve

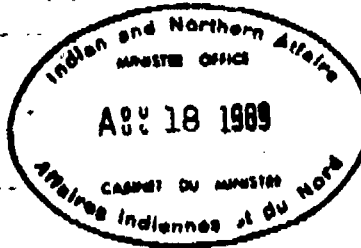
Martha Reeve

Telephone no. - N° de téléphone  
994-7438Date  
October 17, 1989

# 5th International Conference of European Organizations for the Indians of the Americas

## 5. Conferencia Internacional de los Grupos de Apoyo para los Indígenas de America

To  
The Honourable Brian Mulroney  
Prime Minister  
House of Commons  
Parliament Hill  
Ottawa, Ont. K1A 0A6  
Canada



*Follow*

Zurich, August 8th, 1989

160-21-2

Dear Mr. Prime Minister:

At our annual meeting held in Zürich, Switzerland, the 5th International Conference of European Organizations for the Indians of the Americas reviewed with alarm the recent developments regarding the Lubicon Nation. Please find enclosed a resolution passed unanimously by 33 organization of 13 European countries regarding this truly distressing situation.

Sincerely yours,

*Alenaggy Berg*

8891 81 10

cc: Lubicon Indian Nation  
George Erasmus, National Chief Assembly of First Nations  
Don Getty, Premier of Alberta  
~~Pierre Lapointe~~ Minister of Indian Affairs and Northern Development  
John Turner, Liberal Leader  
Ed Broadbent, NDP Leader

2.21.9

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**5th International Conference of European Organizations  
for the Indians of the Americas**  
**5. Conferencia Internacional de los Grupos de Apoyo  
para los Indígenas de América**

INCOMINDIOS Schweiz, Postfach, CH-4303 Kaiseraugst, Switzerland

Resolution in support of the Lubicon Nation

Whereas the participating organizations of The 5th International Conference of European Organizations for Indians of the Americas have reviewed in detail available information and documentation on recent Canadian government creation of the Woodland Cree Band;

And whereas the participating organizations have concluded that the government of Canada is using what can only be considered fraudulent and criminal action in an attempt to deliberately split the Lubicon Lake Cree Nation;

Now therefore the participating organizations demand that the government of Canada:

1. immediately stop its attempt to split the Lubicon Nation and discredit legitimate, democratically elected Lubicon Leadership;
2. meet its constitutional responsibility to the Lubicon Nation by negotiating a fair and equitable settlement of Lubicon land rights.

AKIN - Working Circle North American Indians - Austria  
Peter Schwarzbauer, Weissgasse 9-13/2/1, A-1170 Vienna

AMITIES FRANCO LAKOTA - France  
Didier Dupont, 20 Rue Jean Bart, F-59260 Hellemmes-Lille

Arbeitskreis Nordamerikanische Indianer - West Germany  
Wolfgang Steinhauer, Bühren 11, D-5805 Breckerfeld

BIG MOUNTAIN Aktionsgruppe - West Germany  
Monika Seiller, Franziskanerstr. 36, D-8000 München 80

Big Mountain Denmark - Denmark  
Flemming Andersen, Kalkvej 27, DK-5874 Hesselager

Bund Naturschutz - West Germany  
Landesverband Baden-Württemberg, Erbprinzenstr. 18, D-7800 Freiburg

European Peace Pilgrimage 1992 - Netherlands  
Frits ter Kuile, A. Sneiderln. 14, NL-5615 GE Eindhoven

Fraktion Die GRÜNEN im Bundestag - West Germany  
Inge Lindemann, Hochhaus im Tulpenfeld, D-5300 Bonn 1

Gesellschaft für bedrohte Völker Deutschland - West Germany  
Postfach 2024, D-3400 Göttingen

Gesellschaft für bedrohte Völker Österreich - Austria  
c/o Carlos Macedo, Mariahilferstr. 105/II/13, A-1060 Wien

Gesellschaft für bedrohte Völker Schweiz - Switzerland  
Käfiggässchen 32, CH-3000 Bern 7

INCOMINDIOS Schweiz - Switzerland  
Postfach, CH-4303 Kaiseraugst

INFORMATIONSZENTRALE FÜR  
NORDAMERIKANISCHE INDIANER - West Germany  
Richard Kelly, Martin-Buber-Str. 1, D-1000 Berlin 37

IWERLIEWEN FIR BEDREETE VOLLEKER - Luxembourg  
Antoinette Welter, 12 rue N.S. Pierret, L-2335 Luxembourg

IWGIA International Secretariat - Denmark  
Fiolstraede 10 III, DK-1171 Copenhagen

- 2 -

IWGIA Schweiz - Switzerland  
 c/o Ethnologisches Seminar, Freiensteinstr. 5, CH-8032 Zürich  
 KWIA COORDINATION OF WORKING GROUPS  
 ON INDIGENOUS AFFAIRS - Belgium  
 Lge. Lozanastraat 14, B-2018 Antwerpen  
 Leningrad Leonard Peltier Defense Committee - USSR  
 c/o Andrei A. Snamenski, Tashkentskaya 149-226, USSR-Kuibyshev 443095  
 Lubicon Support Group Sweden - Sweden  
 c/o Elisabet Fastesson, Stationsgatan 32, S-302 45 Halmstad  
 MINORITY INTEREST GROUP (MIG) - Sweden  
 c/o Hugh Beach, Herman Ygbergs Väg 13, S-161 38 Bromma  
 Native Peoples Aid - West Germany  
 Domstrasse 88, D-5000 Köln 1  
 Netherland Action Group North American Indians- Netherlands  
 M. van Kints, Kamgras 23, NL-3068 CB Rotterdam  
 NITASSINAN (FRANCE) - France  
 BP101, F-75621 Paris, CEDEX 13  
 NORSK INDIANSK FORENING - Norway  
 c/o Jan B. Vindheim, P.O. Box 2169, N-7001 Trondheim  
 NORWEGIAN INDIAN SOCIETY - Norway  
 c/o Gyrd Steen, Wessels Gt. 12, N-7043 Trondheim  
 Polski Ruch Przyjaciół Indian - Poland  
 c/o Roman Bala, ul. Kickiego 9, PL-04-373 Warsaw  
 SERPAJ - EUROPA - Netherlands  
 c/o César Mercedes-Manchego, Prinseneiland 3, NL-1013 LL Amsterdam  
 SOCONAS INCOMINDIOS - Italy  
 via Cernaia 36D, I-10121 Torino  
 SVENSK INDIANSKA FÖRBUNDET (SVIF) - Sweden  
 Box 11206, S-10061 Stockholm  
 TRAPEMUWN - Switzerland  
 c/o Germán Antipán, Wangenstr. 44, CH-3018 Bern  
 Verein zur Unterstützung  
 Nordamerikanischer Indianer - West Germany  
 c/o Wilma Hass, Wilhelmstr. 93, D-1000 Berlin 20  
 WIP (Werkgroep Inheemse Volken) - Netherlands  
 c/o Gerda Bolhuis, P.O. Box 4098, NL-1009 AB Amsterdam  
 WISE (World Information Service On Energy) - Netherlands/Sweden  
 c/o Miles Goldstick, Box 1633, S-74200 Östhammar

Zurich, August 9th, 1989

On behalf of  
 5th International Conference of  
 European Organizations for the  
 Indians of the Americas

  
 Helena Nyberg  
 Conference Coordinator

  
 Nathalie Novik  
 Conference President of the day

003458

JLO/J.Holmes/996-5407/tb  
JLO-1851

Department of External Affairs



Ministère des Affaires extérieures

Canada

OTTAWA, Ontario  
K1A 0G2

October 13, 1989

Mr. Martin Low  
Senior General Counsel  
Human Rights Law Section  
Department of Justice  
601 - 239 Wellington Street  
OTTAWA, Ontario

ACC	619319	DATE
FILE	45-CDA-13-1-3-LUB	DOSSIER

CON LAKE  
BAND

Dear Mr. <sup>Martin</sup>Low,

Attached is a copy of the latest submission by the Lubicon Lake Band (Supplement No. 12), which was forwarded to us by the Centre for Human Rights through the Canadian Mission in Geneva.

As you know, the attached submission was intended to be the final one prior to the Human Rights Committee rendering its decision on the merits of the Lubicon complaint. However, given the length and scope of the Lubicon submission, it may be necessary for Canada to submit a brief paper to the Committee clarifying some of the points raised in this supplement. I would be grateful for your views on the submission and a possible Canadian response in due course.

Yours sincerely,

Robert Rochon  
Director  
Legal Operations Division

c.c. (with attachments):  
Justice/Freeman/Whitehall  
FPRO/OACA/Caron  
DIAND/Whitaker/Coulter/Hudson  
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45-14-3-LUBICON

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NO  
6576DATE  
9OCT89

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
	<p>Human Rights Cttee: Complaint by Lubicon Lake Band</p> <p>Attached is latest submission by Lubicon Lake Band, received by UN HRC Secretariat October 6, as promised in para 1 reftel.</p>	<p>Ourtel YTGR6574 9OCT89</p>

**RECEIVED - REÇU**

OCT 12 1989

Legal Operations Division (JLO)  
Direction des Opérations juridiques

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REF. N°:  
(à rappeler dans la réponse)  
C/80 215/51 CANA (38)  
167/1984

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, a ... copy of a submission dated 2 October 1989, Supplement No. 12, concerning communication No. 167/1984 (B. Qminayak and the Lubicon Lake Band v. Canada), which is before the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

The Secretariat takes this opportunity to confirm the receipt of the following submissions from the State party:

- (a) Comments dated 20 June 1989 (transmitted by the Permanent Mission's Note No. 4531/89 of 22 June 1989);
- (b) Substantive comments, transmitted by the Permanent Mission's Note No. 6059/89 of 31 August 1989 (with correction transmitted on 6 September and Appendix 2 transmitted on 15 September 1989);
- (c) Supplement to the 31 August 1989 submission, transmitted by the Permanent Mission's Note No. 6160 of 28 September 1989.

9 October 1989

A handwritten signature in dark ink, appearing to be 'J. M.' or similar.

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Mr. Jakob Th. Moller  
Chief, Communications Unit  
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United Nations Office at Geneva  
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Re: Communication No. 167/1984

Dear Mr. Moller:

Thank you for your transmittal of the Committee's 14 July 1989 decision and submissions made by the Government of Canada, dated 31 August and 28 September 1989.

On behalf of Chief Bernard Ominayak and the Lubicon Lake Band, I have the honor to submit to the Human Rights Committee the enclosed Supplement No. 12 to Communication No. 167/1984.

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

Yours very truly,

  
Jessica S. Lefevre

JSL/sks  
Enclosure

SUPPLEMENT NO. 12  
TO  
COMMUNICATION NO. 167/1984

2 October 1989

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The Lubicon Lake Band (the "Band") respectfully submits the following comments to the United Nations Committee on Human Rights (the "Committee") pursuant to its decision of 14 July 1989 and requests that the Committee make the findings set forth below.

#### INTRODUCTION

In its Comments of 31 August 1989, the Government of Canada attempts to argue three principal points:

1. that Canada is prejudiced in its ability properly to prepare a response in that it claims not to have been advised of the articles of the Covenant on Civil and Political Rights (the "Covenant") on which the Committee's admissibility Decision is based;
2. that the Band has not exhausted local remedies and delays in judicial proceedings have not been the result of governmental actions; and
3. that Canada disputes the facts submitted by the Band as foundations for violations of various articles of the Covenant.

In its Submission of 28 September 1989, Canada purports to inform the Committee of recent developments with respect to negotiations on the Lubicon Lake issues.

The Lubicon Lake Band wishes to provide the Committee a number of observations and comments on these points. In recognition of the Committee's stated desire to reach a decision on the merits of the Band's Communication, and of the fact that

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the Committee has before it an extensive record of the facts and issues to date pertaining to Communication No. 167/1984, the Band has refrained from submitting factual material or legal arguments not presented previously, beyond those required to respond to Canada's 31 August and 28 September 1989 Submissions.

**I. CANADA'S ASSERTION THAT IT IS PREJUDICED IN ITS ABILITY PROPERLY TO PREPARE A RESPONSE IS UNFOUNDED**

**A. The Factual And Legal Grounds For The Lubicon Lake Band Claim Have Been Argued Extensively Before The Committee Over The Past Five Years.**

Canada's attempt to argue that it has not been advised of the articles of the Covenant on which the Committee's admissibility decision is based is completely without merit. In fact, Canada attempted to make the same argument in its submission of 7 October 1987 (see, e.g., pp. 1-3 of that submission) yet went on in that submission to deal with the underlying issues relating to violations of specific articles of the Covenant, as set forth by the Band.

In its past submissions to the Committee, the Band has set forth extensive arguments under several articles of the Covenant, in particular Articles 1, 2, 6(1), 7, 14(1), 17, 18(1), 23(1), 26 and 27.<sup>1/</sup> These arguments have been submitted on behalf of the People of the Lubicon Lake Band through their duly elected representative, Chief Bernard Ominayak.

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<sup>1/</sup> See, e.g., the Band's Supplement No. 8 of 12 January 1988, relevant sections of which are appended as Attachment 1.

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Rather than responding to the Band's charges, Canada specifically elected "not . . . to address . . . the allegations contained under various article headings of the Covenant" as set forth in the Band's submission of 12 January 1988. (See Submission of the Government of Canada, 3 March 1988, p. 10.)

Thus, Canada has chosen deliberately to attack the Committee's decision on the admissibility of the Lubicon Lake Band claim, without responding to the specific charges raised by the Band, which form the basis for that decision. Canada cannot at this late date argue that it is unaware of these specific charges. Furthermore, in its 31 August 1989 submission, Canada, despite its protestations, acknowledges, and attempts to address the charges raised by the Band under the various articles of the Covenant.

**B. The Principal Question Now Before The Committee Is The Question Of The Merits Of The Claims Made By The Lubicon Lake Band.**

Canada's protestations that it is unaware of the basis of the Committee's decision concerning the admissibility of the Lubicon claim are not only unfounded, they are irrelevant. As stated in its decision of 14 July 1989, the question now before the Committee is the substantive merit of Communication 167/1984 as supplemented during the past five years.<sup>2/</sup>

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<sup>2/</sup> While the Committee points out in its 14 July decision that the question of admissibility may be reviewed in conjunction with

[footnote continued next page]

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As in its past submissions, Canada again fails to offer the Committee any evidence of measures in place to rectify the situation faced by the people of Lubicon Lake. Rather, Canada, as in the past, elects merely to deny that a problem exists or attempts to argue that to the extent a problem does exist it is the fault of the Lubicon people themselves. Such assertions fly in the face of extensive factual evidence gathered in recent years by a number of independent observers and by Mr. E. Davie Fulton, Canada's own investigator.

II. IN ITS 27 JULY 1987 DECISION ON THE ADMISSIBILITY OF THE LUBICON LAKE BAND'S COMMUNICATION, THE COMMITTEE FOUND THAT "THERE ARE NO EFFECTIVE REMEDIES STILL AVAILABLE TO THE LUBICON BAND WITHIN CANADA," IN EFFECT HOLDING CANADA IN VIOLATION OF ARTICLES 2(3) AND 14(1) OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS; VIOLATIONS OF ARTICLES 2(1) AND 26 ARE FURTHER EVIDENCED BY CANADA'S TREATMENT OF THE LUBICON LAKE BAND

A. The 27 July 1987 Decision Of The Committee Is Consistent With The Committee's Finding In Munoz V. Peru That The Concept Of A Fair Hearing, Provided For In Article 14(1), Necessarily Entails That "Justice Be Rendered Without Undue Delay."

Disregarding the substance of the Committee's 27 July 1987 Decision, Canada continues its attempt to argue that an effective domestic remedy is available to the Lubicon Lake people. However, as the Committee found in 1987, the traditional

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[footnote continued from previous page]

a review of the merits, Canada's claim that after 5 years of argument it is unaware of the basis of the Committee's admissibility decision is not an explanation or statement providing grounds for a review of the question of admissibility.

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economic base and thus subsistence way of life on which the social structure of the Lubicon Lake Community has rested since time immemorial has been destroyed as a direct result of both the negligence of the Canadian Government and its deliberate actions. No domestic remedy exists which can restore the Lubicon Lake Band's traditional economy or way of life.

The Committee's finding with respect to the situation of the Lubicon Lake Band is consistent with its earlier decision in the case of Munoz v. Peru. (CCPR/C/34/D/203/1986, 17 November 1988.) There the Committee found that with respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1, of the Covenant, the concept of a fair hearing necessarily entails that justice be rendered without undue delay. In the Munoz case, domestic proceedings had been underway for seven years. In the view of the Committee, as expressed in the Munoz case, a delay of seven years constitutes an "unreasonable delay." As the Band has informed the Committee in past submissions, and as is outlined again below for the Committee's convenience, domestic court proceedings in the Lubicon Lake case were initiated in 1975 -- 14 years ago. Moreover, the Lubicon Lake Band first petitioned the Federal Government of Canada for a reserve in 1933 -- 56 years ago. Yet this matter remains unsettled.

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B. Canada Provides The Committee With A False And Misleading Account Of The Domestic Legal History Of The Claims Raised By The Lubicon Lake Band In Order To Avoid Addressing Its Failure To Provide The Lubicon People A Fair And Impartial Hearing And An Effective Remedy Based On Equal Justice As Required By Articles 2(1), 2(3), 14(1) and 26 Of The Covenant.

1. The Band has been forced to bring its fourteen years of litigation to an end due ultimately to two decisions which effectively deny the Band the opportunity to maintain any aboriginal rights claim against the Federal Government of Canada.

As has been argued in great detail in previous submissions, the failure of the Canadian courts to grant the Lubicon Lake Band a fair hearing has resulted in the complete destruction of the Band's economic base and way of life. This tragic fact was corroborated by Mr. E. Davie Fulton in his investigation on behalf of the Government of Canada.

While Canada now attempts to portray its failure to provide a timely domestic remedy to the people of Lubicon Lake as being the fault of the Lubicon Lake Band itself, the following events are matters of public record within Canada:

- ° 1933: The Lubicon Lake Band petitioned the Federal Government of Canada for recognition as a Band and for establishment of a federal reserve.
- ° 1940: The Federal Government informed the Band that such a reserve would be established. To date, this commitment remains unfulfilled.
- ° 1940-1979: The people of Lubicon Lake continued to pursue their traditional way of life essentially undisturbed. They lived in log houses which they built themselves. They spoke their traditional aboriginal Cree language. They hunted moose for food and trapped fur bearing animals to exchange for basic items from the outside such as tea and flour, trading with fur buyers who came into the traditional Lubicon area a few times a year for that purpose.

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- ° 1971-1972: The Alberta Provincial Government commenced construction of an all-weather road into the Band's traditional area, the purpose of which was to open the Band's traditional area for oil and gas exploration and development.
- ° 1975: Representatives of the Lubicon Lake Band filed a request for a Caveat respecting their aboriginal title in order to place potential developers on notice that the Band's aboriginal land title had never been ceded or otherwise extinguished.
- ° 1976: A postponement of the hearing on the Caveat was granted by the Supreme Court of Alberta. Alberta then adopted retroactive legislative which effectively prevented the filing of the Band's Caveat, contrary to elementary principles of fairness and justice, as well as standard modern principles of constitutionality.
- ° 1977: Notwithstanding this aberration of the principles of natural (and Canadian) justice, the Supreme Court of Alberta dismissed the Band's Caveat petition on the basis of this retroactive legislation.
- ° 1978-1979: The all-weather road was completed, opening the traditional Lubicon area for intensive oil and gas development activities.
- ° April, 1980-1981: The Lubicon Lake Band filed its first aboriginal rights action in the Federal Court of Canada seeking a judgment respecting its aboriginal rights as against the Government of Canada, the Government of Alberta and various oil companies. The Federal Court of Canada, Trial Division, and the Federal Court of Appeal held on jurisdictional and procedural grounds that the case against the Federal Government and the federally-owned Crown corporation, PetroCanada, could proceed in federal court, but that the case against the Alberta Government and other offending oil companies would have to be heard by the provincial courts.
- ° 1982: The Lubicon Lake Band filed its second aboriginal rights action in the Alberta Provincial Court seeking a judgment against the Province and the oil companies.
- ° 1979-1982: Over 400 oil wells were drilled within a 15 mile radius of the traditional Lubicon community of Little Buffalo Lake. Oil company employees systematically bulldozed Lubicon traplines and deliberately scared away the animals upon which the Lubicon people depended to feed their families. One of the workers involved, describing the

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instructions he and his co-workers had received about bulldozing Lubicon traplines and firing rifles off into the air to scare away the game, described the deliberate destruction as "almost like a competition." The results of this intense development and deliberate destruction were:

- ° The number of moose killed for food dropped from 219 in 1979 to 19 by 1983.
- ° Average annual per capita income from trapping during the same period dropped from over \$5,000 Canadian to under \$400. Dependence on welfare increased from under 10 percent to over 95 percent.
- ° Social and medical problems proliferated, including: family break-down; still-born and prematurely born babies; the first known suicide in the history of the Lubicon people; a major tuberculosis epidemic affecting one-third of the Lubicon people; a growing alcohol problem and all manner of alcohol-related unnatural deaths, including death by freezing, death by fire and the death of six young Lubicon people caused by a head-on collision with an oil company truck.
- ° It would be easy but wrong to assume that these horrific statistics are merely the result of a traditional hunting and trapping society coming into contact with modern industrial society. In fact the Canadian courts have held that those who would assert unextinguished aboriginal land rights must be able to show that they continue to pursue a traditional way of life. The traditional Lubicon economy and way of life has been deliberately destroyed by Government-directed oil development activity so that Government lawyers could, as they then did, go to court and argue that the Lubicon people no longer enjoy unextinguished aboriginal land rights since they no longer are able to support themselves and their families by traditional means, but rather have been reduced to reliance on Government-provided welfare.
- ° 1982-present: The intensive development activity spread throughout the entire 10,000 square kilometre traditional Lubicon area.
- ° 1982-1985: The Band filed for an interim injunction in the Alberta courts in an attempt to stop the oil and gas activity from destroying its livelihood and way of life. The Court of Queen's Bench of Alberta delayed a hearing until the fall of 1983, effectively allowing development activities to go forward.

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- ° Despite the uncontested evidence of destruction of the Band's hunting and trapping way of life, the Alberta courts refused to grant an interim injunction, based on novel legal theories such as: the Band's traditional way of life had already been lost (due to the development activity); potential money losses to oil companies were more important than the way of life of the Lubicon Lake people; and a finding that the Lubicon people could "restore the wilderness" with money damages if they ever were able to win their aboriginal rights case.
- ° 1985: The Supreme Court of Canada twice refused to hear the Band's appeal of the provincial court decision on the interim injunction, without giving any reasons and despite contradictory judgments from two different provincial courts of appeal.
- ° 1985: The Band, which had been requesting financial assistance for at least 10 years and was now completely impoverished and unable to obtain legal aid, instituted an action in the Federal Court of Canada to obtain funding for litigation on the merits of its claim. The Federal Government refused to provide any funding for this purpose.<sup>3/</sup> The Band's continuing inability to fund its court actions has resulted in an effective denial of legal recourse and equal justice before the Canadian courts.
- ° 1985-1986: The Government of Canada requested that the Band hold legal proceedings in abeyance during the Fulton Inquiry and the Tasse negotiations.
- ° 1985: As requested by the Government of Canada, the Band held further court action in abeyance and concentrated on the Fulton Inquiry.

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3/ Canada states that the \$1.5 million ex gratia payment made in January 1986 was to offset legal expenses, implying that the money was for future court proceedings. This is false. In fact, as mentioned in the Band's Supplement No. 6 of 25 February 1987, the federal communique of 8 January 1986 makes it very clear that the amount of \$1.5 million was not for the purpose of covering prospective legal costs but instead was intended to enable the Band to repay the costs it had incurred in putting forward its grievances over the previous five years. Canada specifically told the Band that the money was not to be used for future legal proceedings. See Attachment 2 for a summary of the Band's attempts to obtain financial assistance to pursue redress through the Canadian court system. At present, the Band has unpaid legal fees and expenses in excess of \$1.5 million.

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- ° 1986: As requested by the Government of Canada, the Band concentrated on possible negotiations.
- ° October, 1986: The Supreme Court of Canada rendered its decision in the Joe case denying federal court jurisdiction in aboriginal rights cases arising within provincial boundaries.
- ° 1987: In light of the Joe decision, the Band requested the Alberta courts to include the Federal Government of Canada as a necessary party in the Band's aboriginal rights proceedings before the courts of Alberta.
- ° 1987: Canada opposed the Band's request to have the Federal Government added as a party to the provincial court proceedings involving the Lubicon Lake Band. Despite the fact that the British Columbia Court of Appeal, in a similar aboriginal rights case (Uukw), had stated that the Federal Government was a necessary party in such proceedings, the Chief Justice of the Alberta Provincial Court refused to add Canada as a party to the Lubicon action.
- ° The result of these two decisions -- the Joe decision and the refusal by the Alberta Provincial Court to assume jurisdiction over the Federal Government -- is that not a single court in Canada is prepared to hear the Lubicon aboriginal rights case against the Government of Canada, even though responsibility for settling aboriginal land rights in Canada is a matter of exclusive Federal Government jurisdiction under the Canadian Constitution.<sup>4/</sup>
- ° Under these circumstances, the Lubicon Lake Band has no remedy within the Canadian judicial system since a provincial court decision with respect to Alberta and the oil companies would not bind the Federal Government.
- ° May 1988: The Federal Government instituted court proceedings, not for the purpose of settling the Lubicon issues, but in an attempt to persuade the Court of Queen's Bench of Alberta that the Band had only a treaty right to 40 square miles of land. From the Federal Government perspective a favorable decision would clear title for the Daishowa timber leases, encompassing virtually all of the

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<sup>4/</sup> Canada has exclusive power to make laws in relation to Indians and lands reserved for Indians under Section 91(24) of the Constitution Act, 1867.

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Lubicon traditional territory, and would moot issues related to destruction of the Band's economic base. However, even the Chief Justice of the Alberta Court of Queen's Bench recognized that the issue of aboriginal rights must be determined before any question of treaty rights may be decided.

- ° Had Canada in fact wanted the courts to settle the Lubicon land rights issues, rather than using the courts to delay resolution until the Lubicon people were no longer able to contest the issue, it would have accepted Mr. Fulton's earlier recommendation that the question of Lubicon land rights be referred directly to the Supreme Court of Canada. A direct reference to the Supreme Court would circumvent years of procedural wrangling, legal argument and appeals as the case wound its way through the lower courts. Canada instead filed it's May, 1988 action in the Provincial Court of Queen's Bench, the lowest possible Canadian court, virtually guaranteeing years of procedural wrangling, legal argument and appeals.

Faced with the threat of on-going destruction of its traditional lands through oil and gas development; the further leasing of its traditional lands to the Daishowa Corporation for timber production; the desolate state of Lubicon society on the brink of extinction; the refusal of Canada to enter into good faith negotiations; and the prospect of years of litigation before courts which had demonstrated time and again a lack of impartiality and independence; the Band also faced a situation in which no Court in the land would assume jurisdiction over the Federal Government in a suit based on the Band's aboriginal rights. It was in this context -- with the Band's way of life in ruin -- and no alternatives open except the physical assertion of the jurisdiction that the Band had never ceded, that the Band withdrew from legal proceedings in October, 1988.

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2. Canada's offer for a negotiated settlement is neither equitable nor does it address the needs of the Lubicon Community since it would leave virtually all items of any significance to future discussions, decisions by Canada or applications by the Band, in return for which the Band would be required to relinquish all rights to present and future domestic or international claims against the Government of Canada, including the present complaint.

As with the domestic court actions undertaken by the Band, negotiations with the Government of Canada will not restore the Band's traditional economy or the social structure of the Lubicon community. Thus, at this time, negotiations, even were Canada to undertake to negotiate in good faith, do not offer a means of redress for the human rights violations suffered by the Lubicon Lake Band, as documented for the Committee over the past five years.

Nonetheless, the Band continues to seek a negotiated settlement to its domestic claims against the Government of Canada, in the hope of providing a basis on which a new community can be built. However, as the Band described for the Committee in its 30 May 1989 submission, Canada continues to refuse to negotiate in good faith:

- ° When Canada's special investigator, Mr. E. Davie Fulton, proposed a discussion paper for negotiations which affirmed virtually all of the Band's claims of abuse and suggested that the Government of Canada bears major responsibility for destruction of the Lubicon Community, he was relieved of his duties.
- ° Canada subsequently refused to employ the discussion principles proposed by Mr. Fulton and agreed to by Canada and the Band as the basis for discussion, attempting instead to push the Band into a settlement based on a unique and highly discriminatory procedure for determining Band

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membership which would have denied aboriginal rights to over half of the Lubicon Lake people.<sup>5/</sup>

- ° Throughout the negotiation process, including the most recent round of negotiations in which Canada in effect dictated the terms of a "take-it-or-leave-it" settlement, Canada has refused settlement proposals put forth by the Band, countering with "settlement offers" in which all substantive points are left to future discussion and the Band is required to relinquish all legal claims against the Government of Canada, including the present action before the Committee.
- ° As evidenced by the 8 September 1989 letter attached to its 28 September 1989 submission, Canada continues to refuse to pay any compensation to the Lubicon Lake Band notwithstanding:
  - ° that compensation is an integral part of Canada's comprehensive land claims policy;
  - ° that Canada's specific land claims policy also provides for compensation;
  - ° that Mr. Fulton in his report recommended compensation;
  - ° that the Band has been deprived of a reserve and most of the services, benefits and programs that other Indians have received in northern Alberta for some 90 years;
  - ° that the Band's traditional lands have been destroyed and that natural resources belonging to the Band have been removed without any compensation whatsoever;
  - ° that the Band effectively has been deprived of the use of its traditional lands and of access to its traditional means of subsistence and that as a result, its economy, social structure, traditional culture and way of life have been destroyed.

Canada's position on this point represents a clear violation of the principle of international law that expropriation may not occur without just compensation.

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<sup>5/</sup> See discussion pages 19-22 below.

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Canada attempts to argue the reasonableness of its demand that the Band relinquish all past, present and future domestic and international legal claims against any government entity as consideration for Canada's "settlement offer." It would be reasonable to expect releases from outstanding claims in the event of a full and final settlement. However, where all terms of settlement have not been fully and finally agreed to, it is entirely unreasonable and contrary to Canadian legal practice to expect a release from outstanding claims.

3. The Grimshaw Agreement provides no resolution of the Lubicon Lake Band's aboriginal land claims, contrary to Canada's deceptive characterization of this agreement.

In October of 1988, Chief Bernard Ominayak, on behalf of the Lubicon Lake Band, and Alberta Premier Don Getty entered a provisional agreement -- the "Grimshaw Agreement" -- for the purpose of settling the issue of the amount of land the Province is willing to transfer to the Federal Government for establishment of a Lubicon reserve. The Band sees it as an important step forward that the present Premier of Alberta has agreed to reach settlement on this point. However, this agreement does not and cannot provide for a Lubicon reserve since only the Federal Government has the Constitutional authority to establish Indian reserves within Canada. In effect, the Grimshaw Agreement does nothing more than remove the Province from the debate over reserve land size. Furthermore, the Lubicon Lake

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Band has never indicated a willingness to cede aboriginal title to its land in the absence of an acceptable full and final settlement agreement, to which the Federal Government must be a party as required by Canadian law.

Contrary to the representation made in its 28 September 1989 Submission, Canada has not offered to implement the Grimshaw Agreement. The deficiencies of Canada's 24 January 1989 "take-it-or-leave-it" offer, and the Federal Government's clear bad faith in putting the offer forward are discussed in detail in the Band's Supplements No. 10 and No. 11, 22 March and 30 May 1989, as well as in this submission.

If Canada in fact is prepared to honor the provisions of the Grimshaw Agreement, as claimed in its 28 September 1989 submission, a number of other issues, not addressed in the Grimshaw Agreement and which include, but certainly are not limited to, the important question of compensation, remain to be settled. (See Attachment 3.)

As demonstrated by its refusal to participate in the September negotiations held by the Band and the Province and its attempts to create the "Woodland Cree" Band, Canada has made no good faith attempt to settle Lubicon claims, including implementation of the Grimshaw Agreement. Rather it actively has sought to undermine that agreement.

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C. The Discrimination And Delays Suffered By All Native People In The Canadian Courts Is A Well Documented Public Issue Within Canada, As Is The Failure Of The Canadian Government To Uphold And Protect The Basic Human Rights Of Native People.

1. Canada's inability to guarantee to its Aboriginal Peoples the fair and public hearing and the equality before the law required by Articles 14(1) and 26 of the Covenant has been recognized by the Canadian Bar Association's Special Committee on Aboriginal Rights.

While Canada objects to the Band's assertion that Canada has failed to provide the Band a fair, independent and impartial tribunal for resolution of its domestic claims, the Canadian Bar Association's Special Committee on Aboriginal Rights has concluded that aboriginal people have not fared well within the structure of the legal system (as set by judicial decisions and legislation) since Confederation.<sup>6/</sup>

After citing some harsh statistics about the disadvantaged position of aboriginal peoples and the underrepresentation of aboriginal people in the Canadian justice system, the Committee states, at page 13, that:

In light of the current make-up of the personnel of the justice system, it is no wonder that many aboriginal people feel alienated from it. However, proper representation would not provide a complete solution. If and when that comes about, the legal system, as it presently operates, would still administer and enforce values and legal rules that often do not mesh with those of traditional aboriginal laws and cultures.

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<sup>6/</sup> Report of the Special Committee, p. 11.

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An examination of our justice system as a whole reveals that it is simply not working in a way that is in the best interest of aboriginal people.

That situation obviously raises a very serious challenge to the status quo.

The Committee concluded Chapter 1 of its Report, at page 14, as follows:

This chapter opened with the question, Can it be said . . . that the aboriginal peoples of Canada have faced, and continue to face, injustice within the legal and justice systems? The answer is clearly yes.

However, it is not enough that Canadians merely recognize past injustices. More important is that we remedy current ones.

In reviewing the situation of the judiciary specifically, the Committee found that "there is no such thing as an independent judge when it comes to dealing with aboriginal matters."<sup>7/</sup>

The Lubicon Lake Band has informed the Committee of its own experiences with the federal and provincial courts in Canada:

- ° During the Band's 1983 provincial court actions, the Provincial Government submitted an affidavit stating that the Band's application for an injunction should not even be heard since the granting of such an application would cost the Province and oil corporations substantial amounts of money in lost oil and gas revenues.
- ° The Band's application for an injunction, which was denied, was heard initially by a judge who formerly was the chief lawyer for the NOVA Corporation, a massive Alberta-based energy conglomerate which controls, among other things, the Husky Oil Company, a major petrochemical facility and gas pipeline construction company with interests in the traditional Lubicon area.

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<sup>7/</sup> Report of the Special Committee, p. 90.

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- ° When the Band appealed the denial of its injunction application, the Chief Justice of the Alberta Court of Appeal selected himself to chair a panel of three judges to hear the appeal. The Chief Justice who was a close personal friend of then-Alberta Provincial Premier Peter Lougheed, had previously served as the Lougheed family attorney and had given Premier Lougheed the Premier's first job as a lawyer in the Chief Justice's law firm. The senior oil company attorney on this case was the Chief Justice's ex-law partner.
- ° The 1985 proceedings in which the Canadian Supreme Court twice refused to hear the Band's appeal from denial of its request for an interim injunction were presided over by a judge who, before his appointment, served as attorney for a number of major oil corporations. After his resignation from the Supreme Court, this individual was appointed to the Board of Directors of the aforementioned NOVA Corporation.

2. Canada has been criticized publicly by the Canadian Human Rights Commission and by Canada's former Ambassador to the United Nations because of the human rights abuses suffered by Aboriginal People within Canada.

The Canadian Human Rights Commission, in its annual report issued in April of this year, found that discrimination of all kinds is still rampant in Canada, but that some of the worst abuses are being experienced by native people. Thus, the Commission placed discrimination against aboriginal peoples at the top of the list of human rights problems in Canada today. The Chief Commissioner, describing the report for a news conference stated that "from the justice system to the government to the job market, natives are systematically ill-treated or their concerns ignored."

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These concerns also have been expressed by Canada's former United Nations ambassador, Mr. Stephen Lewis. At a conference on race relations held by the Federation of Canadian Municipalities in March of this year, Mr. Lewis stated that Canada's treatment of native people is its "Achilles' heel internationally in human-rights issues" and that it threatens to destroy Canada's international reputation with respect to human rights.

3. Canada not only has failed to provide the Lubicon Lake Band equal protection vis a vis non-Indian groups, as required by Articles 14(1) and 26 of the Covenant, Canada has attempted to deny the Lubicon Lake Band equal protection vis a vis other Indian Bands.

At page 8 of its 31 August 1989 Submission, Canada states that the Band's charge that Canada has attempted to subject Lubicon Lake Band members to a retroactive application of the Canadian Indian Act as it stood prior to the Committee's decision in Lovelace v. Canada is "completely incorrect." However, as the Band notified the Committee in previous submissions, in Canada's 1986 position paper on negotiations, the Government of Canada informed the Band that it was only prepared to negotiate a transfer of reserve land based on the following:

7. DETERMINATION OF BENEFICIARIES AND LAND ENTITLEMENT

- 7.1 The federal negotiator is prepared to support and take to Alberta a proposal for the transfer of land to Canada for the purpose of creating a reserve for the use and benefit of the Lubicon Lake Band in accordance with the following:

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- a) the provision of land for a reserve on the basis of the following formula:

128 acres times the number of status Indians registered on the Indian Registry as Lubicon Lake Band members immediately prior to the passage of Bill C-31 plus any natural increases to this number on the basis of pre-Bill C-31 criteria set out in the Indian Act:

\* \* \* \*

- e) the status Indians whose names appear on the membership list maintained by the Lubicon Lake Band and who transfer to the Lubicon Lake Band from other Bands by November 30, 1986 will be considered in the formula under (a) above, however, the "count once" rule and taking of script will be applied to those persons.

- 7.2 As the Minister of Indian Affairs and Northern Development is currently considering what policy should apply to the provision of additional land for persons reinstated under Bill C-31, it is proposed that the question of land for these people be set aside pending the announcement of the policy. This would afford these people the same treatment as all other persons reinstated under Bill C-31.

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- 7.3 Canada is not prepared to consider for negotiation the provision of land in accordance with Treaty Eight for any persons not included as a result of 7.1 (a) or (e) above, nor will it seek any release from or on behalf of those persons as to the fulfillment of any rights they may enjoy.
- 7.4 Canada recognizes that the Band claims as members, persons who do not fall within the criteria set out in paragraph 7.1. The exclusion of these persons is consistent with the policy of Canada in similar situations. (Emphasis added.)<sup>8/</sup>

All settlements of aboriginal and other Native claims in Canada, to date, have been based on the membership lists existing at the time of the first survey of reserve land. The effect of the formula proposed in 1986 by Canada for use in the Lubicon case would be to deny aboriginal rights to more than half of the Lubicon people, treating the Lubicon people in a way that is different, unequal and discriminatory when compared with the treatment of all other Native people throughout Canada's history.

It is clear that at least until December 1988, Canada sought to apply pre-C-31 criteria to the Band, contrary to Article 27 of the Covenant, the Committee's decision in Lovelace v. Canada and

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<sup>8/</sup> Bill C-31 is the domestic legislation passed in Canada as a result of the U.N. Human Rights Committee's decision in Sandra Lovelace v. Canada (Case No. 24/1977).

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Canada's statements to the Committee. It is equally clear that while professing to recognize the Band's control of its membership, Canada continues to refuse to accept the membership list compiled by the Band for purposes of land claims settlement<sup>9/</sup> and as discussed below is now attempting to dismantle Lubicon Lake Band membership through the "Woodland Cree" effort in further breach of Articles 1, 26 and 27 of the Covenant.

### **III. CANADA MISREPRESENTS BOTH HISTORICAL FACT AND RECENT EVENTS SURROUNDING THE LUBICON LAKE CONTROVERSY**

The Federal Government of Canada is vested, through its own constitution and statutes, with the responsibility of serving as trustee and protector of the aboriginal people of Canada. Not only has Canada failed to carry out this duty with respect to the Lubicon Lake Band, it seeks to misrepresent to the Committee both historical and current facts in an effort to divert attention from its failure to fulfill its fiduciary responsibilities.

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<sup>9/</sup> See Attachment 4 for letters from the Registrar of Indian Affairs stating that the Band's membership list "will be considered" upon submission of documentation satisfactory to the Registrar.

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- A. In Attempting To Address Issues Raised By The Band Under Articles 17 and 23(1), and 18(1) and 27 Of The Covenant, Canada Seeks To Divert The Committees' Attention From Canada's Knowing And Willful Destruction Of Lubicon Society By Focusing On A Misleading Discussion Of The Daishowa Timber Project.

In its 31 August 1989 comments, Canada argues with two irrelevant points never asserted by the Band and presents a set of misleading facts that bear no relation to the actual impact of the Daishowa project. Canada first asserts that "the Daishowa pulp mill is located approximately 80 kilometres away from the land set aside for the Lubicon Lake Band." This is true. It also is true, as stated by the Band in its past submissions, that all but 25.4 square miles (65 square kilometres) of the Band's traditional lands were leased in the spring of 1988 for development in conjunction with the pulp mill. The actual location of the pulp mill itself is irrelevant to this point.

1. Only seven months after the Committee issued its 22 July 1987 request under Rule 86 of the Provisional Rules of Procedure, virtually all of the Lubicon traditional territory was leased for timber development in conjunction with the Daishowa timber project.

The 29,000 square kilometre forest management agreement to supply the new mill with trees in fact completely covers the 10,000 square kilometre traditional Lubicon area, with the exception of only a small island of 65 square kilometres (25.4 square miles) set aside but never formally established as a reserve in 1939, which has perhaps now been adjusted to include the 247 square kilometres agreed between the Band and the

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Province at Grimshaw, but which has never been formally established as a reserve either.

The 10,000 square kilometre area is the area traditionally used and occupied by the Lubicon people. It contains traditional Lubicon hunting and trapping grounds used historically by the Lubicon people to support themselves and their families. It has never been ceded and therefore remains properly Lubicon land under Lubicon jurisdiction unless and/or until a settlement agreement is successfully negotiated. This clearly was the area of concern to the Committee when the Committee issued the instruction under Provisional Rule 86. Nonetheless, the trees from this 10,000 square kilometre area have now indisputably been sold to a Japanese pulp mill, following Canada's receipt of the Committee's Rule 86 request, and in clear violation of the Committee's intent in making that request -- i.e., to prevent further damage to the Lubicon community and its lands. (Maps and other materials showing the Daishowa timber lease area and the traditional Lubicon area are appended as Attachment 5.)

Canada attempts to portray the impact of the Daishowa project as being minimal. In fact the current project plans call for the production of 1,000 metric tons of pulp a day and 340,000 metric tons of pulp a year. 340,000 metric tons of pulp translates into about 11,000 trees a day, or about 4 million trees a year. Moreover, plans to double these production figures in three years, and to then increase mill size by an additional 40% five years later have now been announced publicly.

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In addition, Canada argues that the Band's "assertion that the 247 square kilometre area, sought by and offered to the Band, has been totally destroyed" is inaccurate. In fact, the Band has never made such an assertion. As discussed above, the 247 square kilometre area in question was provisionally agreed to in October of 1988 between the Band and the Province in the Grimshaw Agreement. The Federal Government did not participate in the discussions culminating in this provisional agreement and to date has sought effectively to impede final agreement.

What the Lubicon people have been maintaining for some time, consistent with the circumstances in which they find themselves, is that massive, Government directed development activity throughout the unceded traditional Lubicon area effectively has destroyed the traditional Lubicon economy and way of life. The area which the Lubicon people are referring to in making this charge is of course the 10,000 square kilometre area upon which they historically have depended to support themselves and their families.

The 247 square kilometre area is part of the larger 10,000 square kilometre area. However, the fact that the 247 square kilometre area is relatively intact is of no help. The impact of greatest significance to the Band is the loss of the game upon which the Lubicon people traditionally have depended to support themselves and their families. As the direct result of development activities, this game now has been driven from the

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entire 10,000 square kilometre area, including the 247 square kilometre area.

Moreover, the reason there is relatively little development activity in the 247 square kilometre area is not due to the Canadian Government's protection of the area pursuant to the instruction under Provisional Rule 86, as claimed on page 13 of the Canadian submission. Rather, following the complete failure of Canadian legal and political institutions to protect vital Lubicon interests, the Lubicon people themselves have been defending this last, relatively intact little piece of their large traditional area by force of arms, knowing that oil and/or timber development in this area would make it all the more difficult for them to retain this land for reserve purposes as part of any eventual settlement agreement.

Canada cites the Band's wildlife management and land use negotiations with the Province as purported proof that the area has not been severely impacted by development activity, and as purported refutation of Lubicon charges that the game upon which the Lubicon people historically have depended for survival have been chased from the area by development activity. However, the fact of these negotiations in no way "refutes" the Band's charges. These negotiations were commenced in conjunction with the Grimshaw Agreement, reached between the Provincial Government and the Lubicon people last October, and only after the Lubicon people established "passport control points" on all roads leading

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into the 10,000 square kilometre area, effectively controlling access to the entire area. Among the Band's conditions for taking down the "passport control points" was the initiation of negotiations on wildlife management and land use. These demands represent an effort by the Band at least to try to explore ways and means of restoring the environment and game to their traditional territory.

2. With respect to the Band's charges under Articles 6(1) and 7 of the Covenant, the destruction of the Lubicon Lake Band's traditional economy and resource base and the resulting deterioration of its community structure have been observed and documented repeatedly by individuals and groups from outside of the community.

The complete devastation of the economy and society of the Lubicon Community and Canada's clear culpability in this matter have been observed and publicly commented on by a number of independent individuals and groups, including Canada's own independent investigator. Several of these observers have leveled the charge of genocide against the Canadian Government.

- ° In his Discussion Paper, prepared at the request of the Federal Government of Canada after a thorough investigation of the Lubicon Lake situation, Mr. E. Davie Fulton, former Canadian Federal Minister of Justice, former Justice of the Supreme Court of British Columbia, and a broadly supported candidate for the position of Prime Minister, stated in 1986 that:

... They were promised [a] Reserve - an area specifically set aside and designated by agreement between them and the two Governments - in 1940. That was 45 years ago and they still have not got it. Starting in the late 1970's they saw not only their traditional hunting area but the very area which they had been promised as their Reserve.

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- their homeland - subjected to intensive exploration and development against their wishes and with disastrous consequences to them. Substantial revenues accrued from the Reserve, but not to their benefit, and still no action was taken on their behalf. It is not putting it too strongly to say that in all the circumstances it could appear - certainly did to them - that if they had not started Court action in 1982, which was 42 years after the original promise, nothing would have been done for them to this day.

In such circumstances ... their need was urgent, their situation was desperate (sic) and was worsening daily, and their best efforts along the line of negotiation to protect their interests were producing no results in spite of the merits of their position... Discussion Paper, pp. 71 -73 (emphasis added).

° In a sworn affidavit filed with the Provincial Court of Queen's Bench on 24 November 1982, the Chairman of the Anthropology Department at the University of Calgary concludes:

"There is a very great risk that if development activity, particularly gas and oil exploration, drilling and development, increases...in the traditional hunting and trapping territory of the Crees of Lubicon Lake, the result of the continuation of such activities will be the destruction of the society, culture, traditions and way of life of the Crees of Lubicon Lake and the destruction of their economic base."

° After a several month long independent investigation, the World Council of Churches concluded in a letter to Prime Minister Trudeau in October, 1983:

"In the last couple of years the Alberta Provincial Government and dozens of oil companies have taken actions (in the Lubicon Lake area) which could have genocidal consequences...(the Government of Canada) has the constitutional right, power and responsibility to ensure the general welfare and well being of Canadian Indians...to ensure that traditional and aboriginal rights

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are upheld and respected...(and)...to ensure the just and equitable settlement of legitimate Indian rights and claims...the fate of the Lubicon Lake people is clearly and unavoidably (in the hands of the Government of Canada)...and...disasterous consequences can be avoided only by... immediate (Federal Government) action."

° In a letter to his Provincial Government counterpart, dated 17 February 1984, the Federal Minister of Indian Affairs stated that:

"I must point out, that within the last few months, the Band's situation has become progressively worse. As a result of industrial development in the Lubicon region, the autumn harvest was negligible. The threat to the Band's traditional lifestyle is even more pronounced. If this Band is to survive as a group and to preserve its identity, a reserve is desperately needed." (Emphasis added.)

° Following an independent investigation, senior Canadian Church leaders concluded, on 29 March 1984, that:

"We wish to report that we found the well documented allegations presented to us are substantially correct. In the short time we were there, the violation of human rights became apparent to us. The traditional economy which we believe was intact a few years ago, is in a state of ruin. The trust and confidence in the social structure of the Band and in the elders is being severely tried. Everyone is very confused about the sudden lack of control over their lives. Unity amongst the people is being threatened from without. We found that the traditional lifestyle of the Lubicon Lake Cree is in serious jeopardy in light of rapid encroachment of oil and gas development, all without the people's consent. Traditional hunting and trapping trails are criss-crossed by private oil company roads protected by gates and no trespassing signs. We found ourselves subject to the harassment that Band members say happens them continually... we wish to stress that the legal responsibility for the Lubicon Lake Band lies squarely with

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the Federal Government by virtue of the BNA Act and the (Canadian) Constitution. We urge it to immediately begin serious negotiations with the Band to ensure that their traditional and aboriginal rights are respected and to provide the necessary funding so that lack of financial resources does not remain a barrier to the Band pursuing its legitimate rights through the legal system." (Emphasis added.)

- ° A feature story prepared and published in the 7 April 1984, edition of the Toronto Globe and Mail newspaper concluding with an editorial reads, in part:

"Indian trapping incomes have been cut by more than half, the food for which they hunted has vanished -- this year they harvested three moose where three years ago they got 120. Their aboriginal way of life has been virtually destroyed. Meaner treatment of helpless people could scarcely be imagined...If a scrap of decency exists in Ottawa and Edmonton, a just settlement will be sought immediately." (Emphasis added.)

- ° An article that appeared in the 5 June 1984, edition of the New York Times, quoting a well known and highly regarded anthropologist who visited the area and studied the situation, reads, in part:

"James Smith, curator of North American ethnology for the Museum of the American Indian in New York, does not apply the term genocide to the (Lubicon Lake) situation. He says the Indians are victims of 'ethnocide', which he defines as an attempt 'to tear the very fabric of the meaning of life apart'."

- ° A letter to the Federal Minister of Multi-Culturalism from the Human Rights Unit of the Anglican Church of Canada, dated 10 October 1984, reads, in part:

"This letter is to draw your attention to the situation of the Lubicon Lake Band which causes deep resentment and anger to this unit. It is a story of political neglect and bureaucratic deceit extending back for more than 40 years. While the Provincial Government of Alberta may be the major culprit, the past actions of the Federal

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Government and its officials can justifiably be termed irresponsible, unfair, uncaring and at times even fraudulent, as personnel of the Department of Indian Affairs have in retrospect admitted...In light of the dreadful and unjust treatment that the Band has received, it is not too strong a statement to say that the consequences are genocidal...A reserve is essential for the Band's survival. The oil companies are only doing what the Government of Alberta permits and it (the Government of Alberta) is motivated by the desire for gas and oil royalties. We are sure that you will agree that, under the Canadian constitution, it is the responsibility of the Federal Government to look after the Indians." (Emphasis added.)

- ° A statement made on February 22, 1985, by Federal NDP Indian Affairs critic Jim Manly, following a visit to the area, reads, in part:

"Although both Federal and Provincial Governments have been told about the growing danger to the Lubicon people, industrial development continues with no attempt to provide the Lubicon people with an adequate land base. That being the case, I can only conclude that the destruction of their economy and the devastation of their way of life is deliberate. Unless this process is reversed, the end result will be the death of the Lubicon Indians as a people." (Emphasis added.)

- ° As stated in a 1986 editorial in the Calgary Herald:

"the Lubicon Lake issue won't let us sleep comfortably... We're confronted with too many disturbing facts which jolt us into rethinking what it should mean to live in a free, democratic, progressive and just society...It's also not morally right for us to watch a once contented, industrious community in our own country - not in a far away South Africa - lose its way of life, its livelihood and its self-determination within a few short years, and not speak up in protest." (Emphasis added.)

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**B. Canada's Attempt To Place Blame On The Lubicon Lake Band For The Federal Government's Refusal To Participate In Tripartite Negotiations With The Province And The Band Is Demonstrably Without Merit.**

In its 28 September 1989 Supplement to its 31 August 1989 Submission, Canada once again attempts to create the impression that the Lubicon Lake Band refuses to negotiate with the Federal Government. Again, Canada presents the Committee with a distortion of facts designed to support the false impression it wishes to convey. A summary of the events relating to the proposed September negotiations, initiated by the Band, is as follows:

- ° Following Canada's premature termination of negotiations, in January 1989, with the tabling of its "take-it-or-leave-it" offer, which the Federal Government knew in advance would not be acceptable, the Band and the Province agreed to continue negotiations.
- ° The Band and the Province agreed to invite the Federal Government to participate in these negotiations.
- ° The Federal Government has not accepted the invitation to negotiate, rather it indicated a willingness to listen in on a negotiating session. (See Attachment 6.)
- ° In the course of correspondence concerning the proposed negotiating session, Mr. Malone stated that he "assumed" that the Band would present a "counter-proposal" to the Federal Government's 24 January 1989 "take-it-or-leave-it" settlement offer.<sup>10/</sup> (See Attachment 6.)
- ° The Band suggested in response that a joint Provincial-Band settlement proposal would be more appropriate in light of recent efforts by the Province and the Band to reach agreement with respect to the question of reserve land, as evidenced by the Grimshaw Agreement. While a formal joint

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<sup>10/</sup> The Band's grounds for rejecting the 24 January offer are set forth at length in its 30 May 1989 submission to the Committee.

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proposal was not prepared the Band and the Province did agree that negotiations should proceed, and agreement between the Province and the Band was achieved on the majority of the issues outstanding between these two parties. (See Attachment 7.)

- ° The Federal Government requested a formal statement from the Band setting forth the Band's terms for settlement (characterized by Canada as a counter-proposal).
- ° The Band provided the Federal Government a statement of its position on issues subject to negotiation. (See Attachment 8.)
- ° Canada responded that its creation of the "Woodland Cree" Band now raises questions with respect to the amount of land available for the Lubicon Lake Band (See Attachment 9.)
- ° The Federal Government stated its intent to involve a public relations specialist, as part of its negotiating team. (See Attachment 10.)
- ° The Band agreed to this proposal on condition that other members of the press be permitted to attend, in order to preclude a repeat of the January 1989 incident following the Band's discussions with the Federal Government concerning what turned out to be Canada's "take-it-or-leave-it" settlement offer; Canada's public relations specialist attended this meeting and launched a propaganda campaign against the Band, using previously prepared press releases, immediately following the breakdown of discussions.
- ° Canada refused to attend the September negotiating session, but instead held its own press conference. (See Attachment 11.)
- ° The Province and the Band met and continued discussions in the Federal Government's absence. (See Attachment 11.)

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C. Canada's Creation Of The So-Called "Woodland Cree" Band, Through Which Canada Is Attempting To Fabricate A Competing Claim To Traditional Lubicon Lands, Places Canada In Further Violation Of Articles 1, 26 And 27 Of The Covenant On Civil And Political Rights.

1. Canada's creation of the so-called "Woodland Cree" Band, a group of disparate individuals drawn together by Canada from a dozen different communities scattered across Alberta and British Columbia, who have no history as an organized aboriginal society and no relation as a group to the traditional territory of the Lubicon Lake Band, is Canada's most recent effort to undermine the traditional Lubicon society and to subvert Lubicon land rights.

Following the Band's refusal to accept Canada's 24 January 1989 "take-it-or-leave-it" settlement offer, which would have required the Lubicon people to relinquish all rights to legal action involving a controversy with the Canadian government in exchange for promises of future discussions between Canada and the Band, Canada abandoned negotiations with the Lubicon Lake Band, and as discussed above, has refused to re-enter negotiations. Rather than continuing to seek a course of compromise and settlement, Canada sent agents into non-Native communities surrounding the traditional Lubicon territory seeking individuals who might qualify for registration as Indians in an effort to build a "dissident group" capable of displacing the present Lubicon leadership through public elections scheduled for the fall of 1989. The Federal Government initially claimed to have identified "over 180 dissidents" by this means.

The Band confronted this attack on their leadership by calling for an early public election. The election was held on

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31 May 1989. Chief Bernard Ominayak and the other leaders of the Lubicon Lake Band were re-elected by a unanimous vote. Canada's "dissidents" neither ran candidates nor participated in this election.

Failing in the attempt to overthrow the duly elected leadership of the Lubicon people, the Federal Government turned its efforts to building its "dissident" group into a new band, the "Woodland Cree" Band, which Canada has supported financially and legally and has recognized with unprecedented dispatch, bypassing more than 70 other groups, including six different homogeneous and cohesive Cree communities in northern Alberta that have been awaiting recognition as bands for over 50 years.<sup>11/</sup> Some of the alleged members of the "Woodland Cree" Band come from these very communities. The purpose of Canada's effort in this regard is to create a group that the Federal Government can claim has an interest in the same territory as the Lubicon Lake Band. In this way, Canada will be able to block a settlement encompassing the traditional Lubicon territory.

2. In order to bring its new band into existence, Canada has invoked a section of the Canadian Indian Act, Section 17, which clearly contravenes Articles 1, 26 and 27 of the Covenant.

Section 17 of the Indian Act of Canada specifically provides that the Canadian Indian Affairs Minister "may, whenever he considers it desirable":

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<sup>11/</sup> See Attachment 12.

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Constitute new Bands and establish new Band lists with respect thereto from existing Band lists, or from the Indian Register, if requested to do so by [an unspecified number of] persons proposing to form the new Bands.

Where pursuant to subsection (1) a new Band has been established from an existing Band or any part thereof, such portion of the reserve lands and funds of the existing Band as the Minister determines shall be held for the use and benefit of the new Band.

No protest may be made under ... [the section of the Indian Act which provides for the making of protests] in respect of the deletion from or the addition to a Band list consequent on the exercise by the Minister of any of his powers under subsection (1)." (Emphasis added.)

Section 17 of the Indian Act therefore gives the Canadian Indian Affairs Minister the power unilaterally to take an aboriginal society apart, and then to distribute the land and other resources belonging to that aboriginal society as he sees fit. For example, he could decide to give 95% of the land and other resources belonging to an aboriginal society of 500 people, with whom the Canadian Government is displeased for whatever reason, to 5 dissident members of that aboriginal society who are willing, as spokesmen of the new "Woodland Cree" Band have said publicly they are, to do the Canadian Government's bidding.<sup>12/</sup> All the Minister needs to proceed in this way is a request by some unspecified number of individuals - in the Lubicon case

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<sup>12/</sup> As stated by "Woodland Cree" Band spokesman, Billy Thomas, in a 29 August radio interview, the "Woodland Cree" intend to accept "whatever the Government offers."

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clearly solicited by agents in the Minister's employ - who are "proposing to form the new Band."

- a. Canada is employing Section 17 of the Canadian Indian Act to subvert the democratic process of the Lubicon Lake Band, to attempt to dismember the traditional Lubicon society, and to confiscate and redistribute the land and resources of the Lubicon Lake Band.

Article 1 of the Covenant clearly protects a people's rights of self-determination and enjoyment of the benefits of their natural resources, and requires that all State Parties to the Covenant promote and protect such rights. Nonetheless, Canada has passed and now seeks to employ a law which gives the Federal Government the power unilaterally to:

- ° subvert the democratic process of any organized aboriginal society in Canada by ignoring the democratically elected leadership in favor of soliciting, subsidizing and otherwise supporting political dissension and fragmentation;

- ° dismember any organized aboriginal society in Canada by seeking out minority members of that society and offering to establish them as a separate aboriginal society supported by a disproportionate share of the land and resources rightly belonging to the majority;

- ° confiscate and redistribute the land and resources of any organized aboriginal society in Canada in any way the Minister of Indian Affairs sees fit, without compensation or provision for redress.

In the case of the Lubicon Lake Band, Canada, having failed in its attempt to overthrow the elected leaders of the Band through the public election process, now has invoked the

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extraordinary measures of Section 17 of the Indian Act in order to create its "Woodland Cree" Band and to dispossess the Lubicon Lake Band of its traditional territory and culture.

Such power and certainly actions based on such power are intolerable in a human rights regime founded upon principles of self-determination, as memorialized in Article 1 of the Covenant.

- b. In blatant contravention of the guarantees and prohibitions of Article 26, Canada would subject only one racially and culturally distinct group of people within its jurisdiction -- the Aboriginal People of Canada -- to these draconian measures whereby an entire people arbitrarily and summarily may be dismembered and dispossessed of their collective birthright.

Article 26 of the Covenant provides equal protection of the laws and prohibits discrimination on grounds of race, colour, sex, language, religion, or political, social or other status. These protections also are provided in the Canadian Constitution. Nonetheless, through Section 17 of the Indian Act, Canada has determined that the Aboriginal People of Canada, and no other racially or culturally distinct group, may be subjected to a raw and arbitrary exercise of political power through which the Federal Government unilaterally may dismember and dispossess an entire society. Moreover, rather than seek compromise and settlement with the Lubicon Lake Band, Canada now specifically has turned its attention to the exercise of this extraordinary and unconstitutional power with respect to the Band.

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- c. Ignoring both Article 27 of the Covenant and the Committee's decision in Lovelace v. Canada, Canada now seeks effectively to deny the people of the Lubicon Lake Band the ability and thus the right to live in community.

Article 27 guarantees the right of ethnic, linguistic or religious minorities to live in community with others of their group. In the case of Sandra Lovelace v. Canada, the Committee found that where the Indian Act of Canada denied an Indian woman married to a non-Indian man the right to reside within her traditional community by denying her the right to reside on the reserve set aside within the traditional territory of her people, "a breach by Canada of Article 27 of the Covenant" had occurred.

In the Lovelace decision the Committee noted that the significant matter with respect to the Covenant was the claim that the major loss to a person ceasing to be recognized as an Indian is the loss of the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbors and the loss of identity. These principles are likewise applicable to the complaint of the Lubicon Lake Band. Among the many losses the Lubicon people have suffered in recent years is the loss of the cultural benefits of living in their traditional lands, the loss of their homeland, the loss of the right to enjoy their own culture, and the loss of the right to profess and practice their own religion, a religion which is inextricably linked to the land.

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Canada presently is constituting the "Woodland Cree" Band for the sole and transparent purpose of fabricating a competing aboriginal claim to the traditional lands of the Lubicon people. The logical and clearly intended consequence of this action is the ultimate denial of both the ability and the right of the Lubicon people to live in community within their traditional territory -- or anywhere else for that matter, since loss of its territory is spelling the complete disintegration of the Lubicon people as an organized aboriginal society pre-dating the arrival of western Europeans in the Lubicon part of North America.

Thus the creation of the so-called "Woodland Cree" Band not only violates the guarantees of Article 27 of the Covenant, it violates the Committee's prior decision in Lovelace v. Canada.

3. Despite offers of land, money, housing, a new school and other facilities, as well as provision of legal and technical assistance to those dissident Lubicons whom the Canadian Government has managed to buy, Canada clearly has managed to convince only a distinct minority of Lubicon people to join the new so-called "Woodland Cree" Band.

As discussed above, at a duly called election of Lubicon leaders held on 31 May 1989 -- conducted in the presence of provincial and national media who attended the election and observed the proceedings -- current Lubicon leadership was unopposed and re-elected unanimously. Contrary to the normal political process for resolving political disputes within organized democratic societies, "dissident Lubicons," supported

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by legal and technical assistance provided by Canada, neither ran candidates nor participated in the election.

While Canada claims that the new so-called "Woodland Cree" Band represents some 350 people, Canada has consistently refused to release the names of these people so that such claims can be verified. Canada admits, however, that the list of "Woodland Cree" Band members as currently constituted and officially recognized by Canada contains the names of only 110 people.

Of these 110 "registered Indians of the Province" on the currently constituted and officially recognized "Woodland Cree" Band list:

- ° 63 appear as federally registered Lubicons, yet only 37 appear on the Band list compiled by the Lubicon people. This means that Canada has added 27 people to the registered Lubicon list without consulting the Lubicon people, and then transferred those 27 people to the officially recognized "Woodland Cree" Band list. Most of these 27 would not meet Lubicon membership criteria, including the requirement of residence in the traditional Lubicon area.

- ° 12 of the 37 people who appear on both the Woodland Cree and Lubicon membership lists have signed sworn statements indicating that they do not want their names added to the "Woodland Cree" membership list, but wish to remain on the Lubicon membership list.

- ° The 73 remaining individuals are registered members of five other recognized aboriginal societies and residents of at least 11 other non-Native communities or Metis communities scattered throughout Alberta and British Columbia.

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IV. THE LUBICON LAKE BAND RESPECTFULLY REQUESTS THAT THE COMMITTEE FIND IN FAVOR OF THE BAND ON THE BASIS OF THE EVIDENCE AND ARGUMENTS SUBMITTED IN COMMUNICATION NO. 167/1984 AND THE SUPPLEMENTS THERETO

A. Canada Is Unable To Refute The Charges Brought By The Band Under Articles 1, 2, 6(1), 7, 14(1), 17, 18(1), 23(1), 26 and 27 Of The Covenant On Civil And Political Rights.

1. Article 1

The Lubicon Lake Band recognizes and respects the Committee's determination, as stated at paragraph 14.3 of its 22 July 1987 decision on the admissibility of the Lubicon Lake Band claim (CCPR/C/30/D/167/1984), that Chief Ominayak, as an individual, may not claim under the Optional Protocol to be a victim of the right of self-determination provided pursuant to Article 1 of the Covenant. However, the Band wishes respectfully to point out that Communication No. 167/1984 is entitled "Communication of Chief Bernard Ominayak and the Lubicon Lake Band to the Human Rights Committee." That communication specifically states that it is submitted on behalf "of Chief Bernard Ominayak and the Cree Band of the Lubicon Lake in Alberta, Canada." While Chief Ominayak, as representative of the Band, signed the original and all subsequent submissions to the Committee, it is clear that Chief Ominayak acts only in his capacity as duly elected representative of the Band and not on his own behalf.

Furthermore, the Band respectfully notes that while Article 2 of the Optional Protocol provides for the submission of

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claims to the Committee only by "individuals" as a result of violations of "any of their rights enumerated in the Covenant," Article 1 of the Covenant guarantees "all peoples ... the right of self-determination." (Emphasis added.) Thus, if the Committee determines that an individual submitting a claim on behalf of a group, in compliance with the provisions of Article 2 of the Optional Protocol, may not state a case on behalf of that group under Article 1 of the Covenant, the Committee effectively has determined that the rights enumerated in Article 1 of the Covenant are not enforceable.

Clearly it could not be the intent of the Committee to reach such a result. Therefore, the Band respectfully submits that as a People, represented by their duly elected leader, Chief Bernard Ominayak, the Lubicon Lake Band has been the victim of violations by the Federal Government of Canada of the Band's rights as enumerated in Article 1 of the Covenant on Civil and Political Rights. Specifically:

° Article 1(1)

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

The ROYAL PROCLAMATION of 1763, now incorporated into the Canadian Constitution, provides recognition of the sovereignty of aboriginal nations and the title of aboriginal peoples in their

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traditional lands. The Canadian Government, through the Indian Act of Canada<sup>13/</sup> and Treaty 8, entered with Indian Bands in Northern Alberta, also assumed responsibility for the original inhabitants of that area and recognized their right to continue their traditional way of life. Despite these laws and agreements, the Federal Government of Canada has expropriated, without compensation, the territory of the Lubicon Lake Band - originally for purposes of oil and gas development and more recently for purposes of timber development as well. In so doing Canada has refused to recognize the Lubicon Lake Band's right to continue its own social, political, and economic practices within a portion of its aboriginal territory. Through its efforts to create the so-called "Woodland Cree" Band, Canada is attempting to undermine the political status and to further undercut the economic, social and cultural development of the Lubicon Lake Band.

° Article 1(2)

Canada stands in violation of Article 1(2) in so far as that Article grants all peoples the right to dispose of their natural wealth and resources for their own ends. The resource development currently being allowed in the area of Lubicon Lake will accrue to the benefit of private corporate and governmental entities rather than to the People of Lubicon Lake. Moreover,

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<sup>13/</sup> Can. Rev. Stat. c.1-6 (1970).

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Canada now seeks directly to expropriate the remaining natural resources of the Lubicon People and to transfer them to the Federal Government's new "Woodland Cree" Band.

° Article 1(3)

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

Through the on-going physical destruction of the environment and the deliberate efforts to undermine the Band's political, social and economic base, Canada seeks to deprive the Band of any means by which to subsist on its own.

2. Articles 2, 6(1), 7, 14(1), 17, 18(1), 23(1), 26 and 27

As set forth in the Band's submissions of 12 January 1988 and 30 May 1989, Canada, in its treatment of the people of Lubicon Lake and its handling of matters related to the Lubicon Lake Band's aboriginal land rights, has violated Articles 2, 6(1), 7, 14(1), 17, 18(1), 23(1), 26 and 27 of the Covenant.<sup>14/</sup> As discussed in the present Submission, Canada not only remains in violation of these articles, it has committed further violations of Articles 26 and 27, as well as Article 1, as a result of its most recent attempt to dispossess the Lubicon

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<sup>14/</sup> Relevant sections of the Band's 30 May 1989 Submission are appended as Attachment 1 to this submission.

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Lake Band by setting up its so-called "Woodland Cree" Band in order to fabricate a competing claim to Lubicon traditional territory.

**B. Canada Has Failed To Observe Two Directives Of The Committee Under Rule 86 Of The Committee's Provisional Rules Of Procedure.**

1. On 8 February 1988, just over six months after the Committee's 22 July 1987 request under Rule 86, Canada announced its contribution of \$9.5 million to the Daishowa timber project for timber development encompassing virtually the entire Lubicon traditional territory.

On 22 July 1987, the Committee issued its decision on the admissibility of the Lubicon Lake complaint and requested, under Rule 86 of the Committee's Provisional Rules of Procedure that Canada "take interim measures to avoid irreparable damage" to the members of the Lubicon Lake Band. Rather than refrain from further actions threatening the continued viability of the Lubicon Lake community, just over six months later, on 8 February 1988, Canada announced that it was contributing \$9.5 million to infrastructure development in conjunction with the simultaneously announced \$500 million Daishowa timber development project.

As discussed in this Submission and the Band's Supplement No. 9 of 28 March 1988, the Daishowa project entails timber leases which cover virtually the entire Lubicon traditional territory.

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2. On 28 August 1989, only six weeks after the Committee's 14 July 1989 request under Rule 86, Canada announced the creation of its "Woodland Cree" Band through which it alleges to have identified a competing claim to traditional Lubicon lands.


As also is discussed in this Submission, in the spring of 1989, Canada announced the creation of its newly constituted "Woodland Cree" Band. The clear purpose of this action is to dispossess the Lubicon Lake Band, as well as any other Indian bands who might claim aboriginal title to the timber and oil and gas development areas, of all aboriginal rights claims. In this way, Canada proposes to moot all outstanding aboriginal issues without ever directly addressing the claims raised by the aboriginal owners of the territory or providing compensation or redress for the losses they are suffering.

These actions on Canada's part not only constitute violations under the Covenant on Civil and Political Rights, as set forth in this submission, they represent a clear and blatant disregard of the Committee's request under Rule 86.

#### CONCLUSION


The Lubicon Lake Band originally approached the United Nations Committee on Human Rights in 1984 in the hope that such an august body would be able to provide desperately needed assistance to the Band in its attempt to convince the Government of Canada to act responsibly with regard to this matter, before the destruction of the community is complete. That is still the hope at Lubicon Lake.

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.



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Attachment 1

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

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

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

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

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

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

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

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

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

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

**b. Article 6(1)**

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

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

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

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

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

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

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

**c. Article 7**

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

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

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

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

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

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

**d. Articles 14(1) and 26**

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

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

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

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

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

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

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

e. Articles 17 and 23(1)

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

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

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

**f. Article 18(1)**

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

**g. Article 27**

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

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

Attachment 2

The Canadian submission suggests repeatedly that the Lubicon people have not followed up on various Lubicon legal initiatives "despite . . . Canada . . . (providing) . . . overall financial assistance to the Band of over \$1.8 million to assist it in pursuing negotiations and its court actions." As with the many other elements in the Canadian submission, these statements are deliberately calculated by Canada to create an impression quite different than the truth.

Lubicon requests for financial assistance from the Canadian Government go back to 1974. The Lubicon people were facing the opening-up of their traditional lands for development activity and neither level of Canadian Government was prepared to negotiate a settlement of Lubicon land rights, taking the position that the Lubicon people had no land rights to negotiate but were rather only squatters on Provincial Crown land.

Since the Canadian Government is constitutionally responsible for ensuring that aboriginal rights in Canada are respected and enforced, and since the question of whether the Lubicon people retain continuing aboriginal land rights is a legal question under Canadian law, Lubicon lawyers reasoned that the Canadian Government might at least provide the impecunious Lubicons with sufficient financial support to enable the Lubicon people to make their case before the Canadian Courts. At first

-2-

Canadian officials gave the Lubicons the impression that Canada in its capacity as constitutionally designated "trustee" of the Indian interests in Canada would help finance the Lubicon caveat case. However, as is so often the case with the Canadian Government, that impression was an illusion. Instead Canada chose to intervene on behalf of the Provincial Government in the caveat case.

By 1980 Canada was prepared to admit and talk about an outstanding treaty land entitlement under a treaty which the Lubicon people had never signed, but was still refusing to negotiate unextinguished Lubicon aboriginal land rights. The Provincial Government, which was required under the 1930 Lubicon land transfer agreement to transfer back to Federal jurisdiction any land which the Federal Government needed to settle outstanding treaty land entitlements, was refusing to cooperate with even treaty land entitlement negotiations. After extensive discussions Federal Justice Department lawyers agreed that the issues involved qualified for Federal legal financial assistance in order to achieve a judicial determination. However, no financial assistance was ever forthcoming.

Discussions regarding possible Federal legal financial assistance were continuing in 1982 when, in growing desperation, the Lubicon people filed their application for an interlocutory or emergency injunction. At that time the Lubicon request for

-3-

legal financial assistance was officially denied by Canada. The reason given, contrary to earlier statements by Justice Department lawyers, was that "the litigation does not fall within the approved criteria for funding assistance".

During the years of struggle to achieve recognition of their aboriginal land rights the Lubicon people had accumulated debts of nearly two million dollars, including two bank loans totalling some \$600,000. Since the Lubicon people had no collateral with which to negotiate such loans, the loans had been guaranteed by Lubicon supporters who could provide such collateral. Those loans were coming due in April of 1985, and interest on the loans was accruing at the rate of nearly \$10,000 per month.

In November of 1984, under growing national and international pressure, Canada finally agreed to negotiate Lubicon land rights without prejudice to the nature of those rights. In other words, both sides agreed to set aside their disagreement over the nature of Lubicon land rights and concentrate instead on issues like reserve land quantum and rebuilding the shattered Lubicon society. One of the key items discussed was repayment of the rapidly coming due bank loans.

In March of 1985 Canada agreed to loan the Lubicon people the sum of \$191,000 "as a first charge against settlement compensation received from the (Federal) Crown." The money was explicitly to provide partial reimbursement of research and other

-4-

non-litigation expense already incurred, and the involved loan agreement explicitly excluded payment of any litigation costs. Additional financial assistance was to be discussed with Federal Inquiry Officer E. Davie Fulton when he commenced his Inquiry in early April.

When Mr. Fulton arrived in the traditional Lubicon community of Little Buffalo Lake he told the Lubicon people that no one had told him that he was to arrange for promised financial assistance. However, he agreed to make inquiries, which he then did, reporting back that Canada was firmly opposed to providing money to cover the cost of any litigation. While he was working on recommendations regarding provision of required financial assistance, Mr. Fulton made short term arrangements for a loan of \$51,000 against anticipated settlement compensation monies to at least pay interest charges on the now past due bank loans. As in the case of the \$191,000, the \$51,000 was repayable at the time of settlement and was not available to cover the cost of any litigation.

On July 12, 1985, Mr. Fulton recommended to Canada that the Lubicon people be provided, on a without prejudice basis, an amount sufficient to retire all outstanding debts incurred in their struggle to achieve recognition of their aboriginal land rights or at least adequate to cover the outstanding bank loans. Mr. Fulton then aggressively encouraged Canada to act favorably

-5-

on his financial assistance recommendation, arguing rightly that the debts wouldn't exist had Canada met its constitutional responsibilities in the first place.

Six months later, as part of an effort to gracefully remove Mr. Fulton from the picture, Canada announced that it had accepted Mr. Fulton's recommendation to provide the Lubicon people with financial assistance to cover expenses already incurred. The amount involved was \$1.5 million. The Government press statement indicated that "the money is intended to enable the Band to meet the costs it has incurred in putting forward its grievances over the past five years." As in the case of the \$191,000 and the \$51,000, the letter announcing the assistance made clear that "the \$1.5 million will be taken into consideration as part of any resolution of the Band's grievances."

Negotiations last December and January were held in Ottawa, at Canada's insistence, and Canada therefore agreed to pay the cost of travel and accommodation for Lubicon negotiators. The total cost of Lubicon travel and accommodation for the six weeks of negotiations was \$54,000.

It is these four sums of money, totalling some \$1.79 million, that Canada is referring to when it claims in its 8 August 1989 Submission that "Canada has provided overall financial assistance to the Band of over \$1.8 million to assist it in pursuing negotiations and its court actions." In fact,

-6-

except for the \$54,000 to cover travel and accommodation costs last December and January, all of this money was provided to cover expenses already incurred by the Lubicon people during previous years of trying to bring Canada to the negotiating table, and none of it was provided to enable the Lubicon people to pursue legal redress.

Attachment 3

10/03/89 06:59

P62

C. 4. 2-11/88

GRIMSHAW AGREEMENT  
ALBERTA/LUBICON BAND PROPOSAL

1. Alberta is prepared to transfer to Canada the administration and control of 79 square miles of provincial Crown land including mines and minerals, to enable Canada to establish an Indian Reserve for the use and benefit of the Lubicon Lake Indian Band and its members.
2. Alberta is prepared to sell to Canada at fair market value the fee simple interest, excluding mines and minerals, to a further 16 square miles for use by the Lubicon Band.
3. Canada will be responsible for the compensation of all third party interests, surface and subsurface, within the 79 square mile area in order that the lands are rendered "unoccupied" prior to transfer by Alberta to Canada.
4. Canada will be responsible for the compensation of all third party surface interests within the 16 square mile area.
5. Any arrangements concerning the surface of the 16 square mile area will be between the Lubicon Band and Canada. Alberta will retain ownership and control of mines and minerals. No development will occur on these lands without the consent of both Alberta and the Band.
6. The lands referred to in 1 and 2 above will approximate the lands identified in Schedules "1", "2" and "3" attached, the precise boundaries to be subject to further negotiations.
7. Notwithstanding 6, it is understood that, generally, the lands to be transferred will not involve currently producing oil and gas interests.
8. Notwithstanding 6, it is understood that Alberta will retain access to Lubicon Lake.
9. The Band and its members will provide a full and final release to Canada and Alberta, in a manner satisfactory to Canada and Alberta, with respect to the claims of all of the 477 people on the Band's membership list as of March 17, 1988.

10/01/89 15:05

P07

2 '88 13:17 MEMBERSHIP

P. 2  
PAGE 2 OF 2



Indian and Northern Affairs Canada  
Affaires indiennes et du Nord Canada

Attachment 4

December 22, 1988

Your file / Votre référence

Our file / Notre référence

E6000-453

Mr. I.G. Whitehall  
Senior General Counsel  
Department of Justice  
Justice Building  
Room 325, Kent & Wellington Streets  
OTTAWA, Ontario K1A 0H8

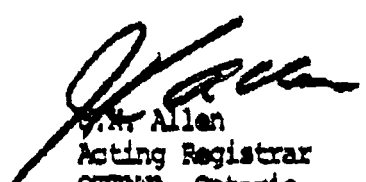
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Dear Mr. Whitehall:

Pursuant to our telephone conversation this morning, I can confirm that, based on the genealogical charts as prepared by the Lubicon Lake Band and additional verbal information that has been supplied by the band, I am of the present opinion that we can confirm the eligibility of the additional 245 persons that the band has identified as being eligible for registration. This opinion will be confirmed or refuted by a review of the documentation that I received yesterday from Mr. Coulter.

A conclusive report on eligibility will be available by January 6, 1989 with respect to those persons for whom sufficient documentation has been supplied. The band will be informed immediately of any additional document requirements.

Yours sincerely,

  
J. Mr. Allen  
Acting Registrar  
OTTAWA, Ontario  
K1A 0H4

c.c. R. Coulter

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Canada

10/01/89 15:06

P08

JAN 25 '89 17:16 MEMBERSHIP

P.1



Indian and Northern Affairs Canada  
Affaires indiennes et du Nord Canada

January 5, 1989

Lubicon Lake Band  
c/o Fred Lennarson  
11219 - 39A Avenue  
EDMONTON, Alberta  
T5J 0N7

BEST AVAILABLE COPY


Dear Mr. Lennarson:

We have completed our review of the documentation pertaining to the eligibility to registration of the 245 persons on the Lubicon Lake Band list previously identified as being potentially eligible.

The persons identified in the appendix require additional documentation in the form of birth registrations or affidavits to confirm paternity or Indian ancestry. In the case of each affidavit I have suggested who should supply the affidavit. If you find that it is not possible to obtain the affidavit from the preferred individual (for example, the mother of the applicant may be deceased), it should be obtained from a person whom you believe to have next best knowledge of the situation.

If you require any additional information or assistance please let me know.

Yours sincerely,

  
J.K. Allen  
Acting Registrar  
OTTAWA, Ontario  
K1A 0H4

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# Lubicon area now off-limits

By Kathy Kerr  
and Mark Lowey

(Herald staff writers)

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 LeRoy Fjordbotten 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 65 square kilometres that the province recognizes as a future Lubicon reserve.

But Fjordbotten said there will be no logging on a larger disputed area of about 155 square kilometres, including the 65-square-kilometre parcel. Daishowa will be given an alternate cutting area until the claim is settled, he said.

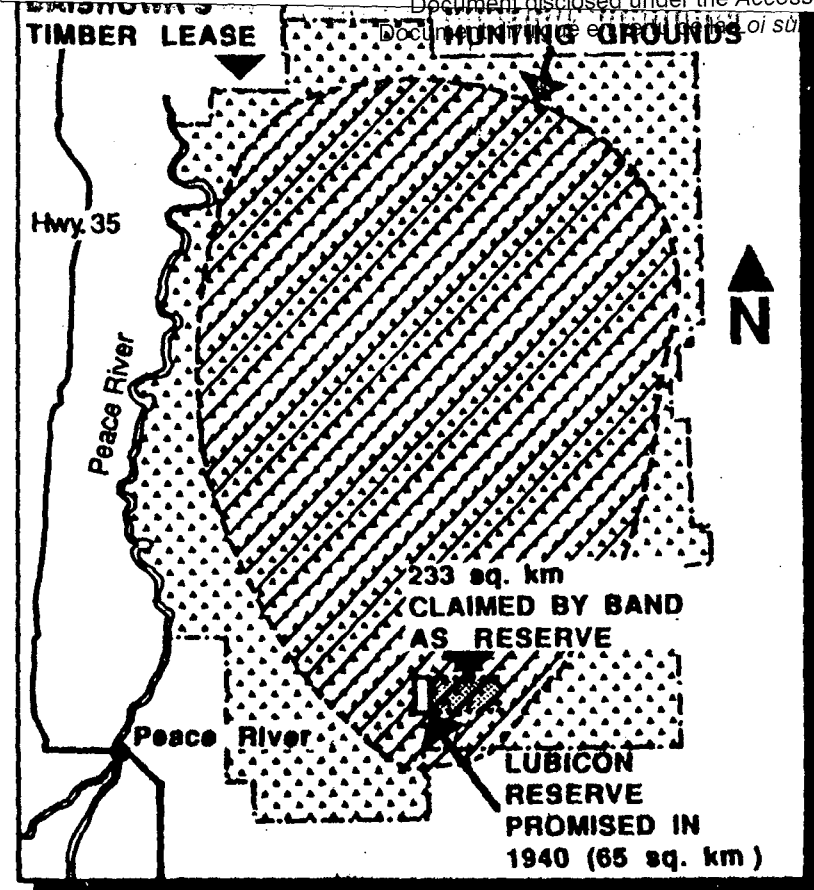
The Lubicons claim a reserve of about 235 square kilometres.

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

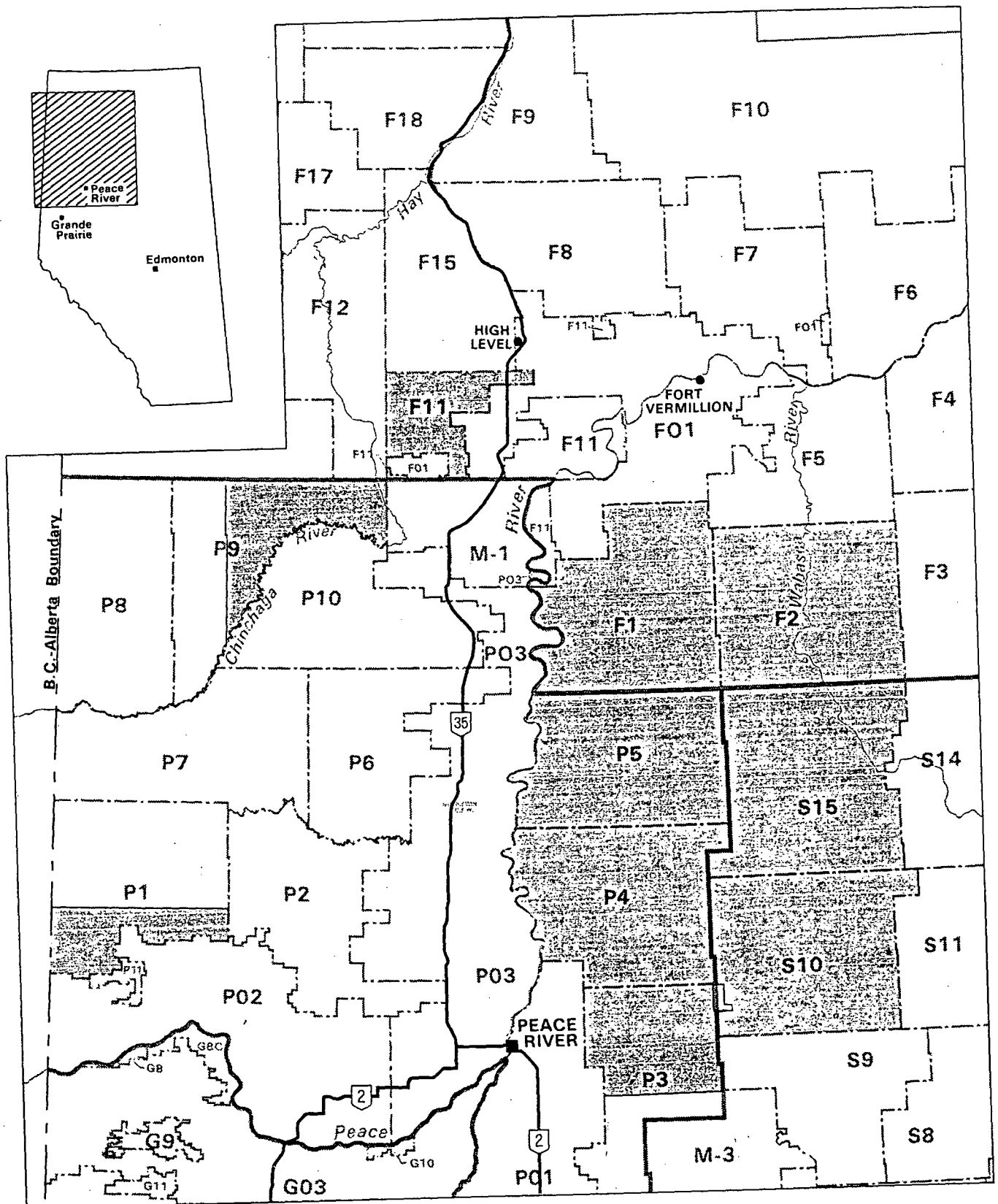
"There could be all kinds of claims on all kinds of land. It was our best judgment to move forward with that," he said. "There wouldn't be any cutting of timber in that particular area that's been recommended by the federal government."

The Lubicons 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.

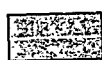
Lubicon chief Bernard Ominayak accused the province of



Noreen Dennis, Calgary Herald



**DAISHOWA CANADA CO. LTD.**



**PROPOSED FOREST MANAGEMENT AREA**

09/28/89 18:17

P05

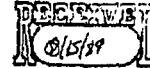
Attachment 6



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

August 11, 1969



John T. McCarthy  
MacLeod McManus  
2200 Bow Valley Square 4  
250 - 6th Avenue S.W.  
CALGARY, Alberta  
T2P 3H7

Dear Mr. McCarthy:

Lubicon Lake Indian Band Land Claim

I have just received your letter of July 27th wherein Alberta has relayed the Lubicon Lake Band's request for the resumption of tripartite talks.

You will recall that Canada's offer of January 24th was rejected by the band when their negotiators unilaterally broke off settlement talks in Ottawa. As you know that offer has remained open. We assume therefore that the band now wishes to present a meaningful counter-proposal within the bounds of Canadian law. Canada is prepared to participate based on the expressed desire of the band and Alberta to resume discussions.

Given the province's interest in shepharding the talks as a sort of "mediator/participant" I suggest we use your offices in Calgary. As for suitable dates I can alter other obligations so as to be available on any of the following: September 7 - 8, September 11 - 15, September 18 - 20, September 25 - 28. Frankly, I prefer September 7 - 8. Two consecutive days of discussions should indicate whether the band's counter-proposals form the basis for meaningful discussions.

I should like to have the band's agenda of discussion points not later than August 31 in order to receive instructions from my client on September 5th.

Yours truly,

J. Brian Malone, Q.C.  
Federal Negotiator

Canada

09/28/89 18:18

P07  
403-436-5652

BY FAX to 403-263-6840

August 15, 1989

Attachment 7

Mr. John T. McCarthy  
Macleod McManus  
2200 Bow Valley Square IV  
250-6 Avenue S.W.  
Calgary, AB T2P 3H7

Dear Mr. McCarthy:

Thank you for sending me a copy of Malone's August 11th letter regarding resumption of Lubicon land negotiations. Obviously the Federal Government intends to continue trying to outsmart, outmanoeuvre, outlast and/or discredit the Lubicon people, instead of engaging in serious negotiation of Lubicon land rights.

Since the parties all know better, the blatant factual misrepresentations included in the Malone letter clearly represent an effort to re-write history in such a way so as to support the Federal Government's deceitful anti-Lubicon propaganda campaign. Under such circumstances we're obliged to set the record straight.

Malone's statement that Lubicon negotiators "unilaterally broke off settlement talks in Ottawa", for example, badly distorts what really happened. What really happened, as we both know, is that the Federal Government deliberately broke down negotiations with a "take-it-or-leave-it" settlement offer which Federal officials knew in advance wasn't acceptable, since it failed to make any provision for the Lubicon people to once again become socially and economically self-sufficient.

Similarly deceitful and deceptive is Malone's statement that the Federal Government's so-called offer "has remained open". The word "open" suggests that the Federal Government is prepared to discuss the so-called offer, which in point of fact isn't the case. Rather the Federal Government's position since the collapse of negotiations has consistently been that "the Federal offer is firm and won't be changed".

Malone describes your letter of July 27th as "relaying the Lubicon Lake Band's request for resumption of tripartite talks". The Lubicon people made no such request. Rather faced with an unacceptable "take-it-or-leave-it" settlement offer from an

09/28/89 18:19

P08

2

intransigent Federal Government which effectively allowed for no further negotiations, Premier Getty and Chief Ominayak agreed to proceed with negotiations between the Provincial Government and the Lubicon people, and to invite the Federal Government to join those negotiations. Nobody should mistake an invitation for the Federal Government to join pre-agreed negotiations with a "request for resumption of tripartite talks". It's a quite different matter, differently motivated with a quite different purpose and implications.

Malone indicates that he can't be available to join negotiations before September 7th, giving himself and his colleagues the time they need to formally constitute the new Woodland Cree Band--which Federal officials clearly hope will enable them to effectively torpedo the Grimshaw Agreement. In this regard they of course can and will do as they please. However we're not obligated to simply react to what they do. Premier Getty and Chief Ominayak agreed to proceed with negotiations starting in mid-August with or without Federal Government involvement, and we're consequently prepared to commence negotiations immediately--consistent with that agreement.

Malone says that the Federal Government "assumes" that "the Band now wishes to present a meaningful counter-proposal (to the Federal Government's "take-it-or-leave-it" settlement offer) within the bounds of Canadian law". He says that he "prefers September 7-8". He says that he believes "Two consecutive days of discussions should indicate whether the Band's counter-proposals form the basis for meaningful discussions".

We therefore propose, consistent with the agreement between the Chief and the Premier, to have a joint counter-proposal, supported by both the Lubicon people and the Alberta Government, ready to discuss with Malone & Co. on September 7-8.

Malone proposes that the talks be held in Calgary. We propose Edmonton, since most of your negotiators live in Edmonton, and since Edmonton is also closer and more convenient for Lubicon negotiators.

Malone asks for an "agenda of discussion points not later than August 31 in order to receive instructions from (his) client by September 5th". We propose to develop that "agenda of discussion points" together with representatives of the Provincial Government between now and August 31st.

Having a joint Alberta/Lubicon proposal ready to discuss with the

09/28/89 18:20


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Feds by September 7th will of course take some effort. However, especially given the work already done, we consider a joint Alberta/Lubicon proposal by September 7th to be imminently doable.

We also know, as do you, Lubicon options this fall in lieu of any hope of a negotiated settlement.

Sincerely,

  
F.M. Lennarson

cc: Chief Bernard Ominayak  
Mr. James O'Reilly

003543

Specific items as yet unresolved and requiring further negotiation with respect to Lubicon Lake Band claims include:

- 1.) the legal form and juridical content of the settlement agreement including any relevant releases;
- 2.) implementation of the Grimshaw Agreement including the disposition of third party interests and indemnification;
- 3.) Lubicon self-government including legislative, administrative and membership rights;
- 4.) reserve community construction including community and institutional planning; a construction site camp; a Band office; a community hall; a combination police station, fire hall, court room and lock-up; a health centre with ambulance service; school buses; a combination old peoples home and day care centre; a combination community shop and vocational training centre; a recreation centre; phone service; a natural gas utility; a community satellite dish and short range transmitter; a garbage incinerator; community capital equipment and capital equipment storage building;
- 5.) community commercial enterprises including a general store with gas station, a portable concrete batch plant, a gravel crushing facility and an eight unit motel;
- 6.) development of reserve lands for agricultural purposes including agricultural equipment, the clearing and irrigation of land, a cow/calf herd, a large animal veterinary clinic, a slaughterhouse, forage crops, a saskatoon berry farm and a wild rice operation;
- 7.) financial compensation and the establishment of a capital fund to produce interest revenues in perpetuity for use by the Lubicon people as a society;

28 SEP. '89 18:28 UNOG TELECOMM GVA +41 22 7339879

P.4

Attachment 9



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

APPENDIX 1.

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September 8, 1989

The Hon. Minister of Indian Affairs and Northern Development

Our file: 18-100-100-100-100-100

WFX542

Mr. John T. McCarthy  
MacLeod McManus  
2200 Bow Valley Square 4  
250 - 6th Avenue S.W.  
CALGARY, Alberta  
T2P 3H7

Dear Mr. McCarthy:

Lubicon Lake Band Land Claim Negotiations

In your capacity as the Premier's moderator/facilitator, you may wish to deliver a copy of this letter to the Band.

As you are aware Canada has been in receipt of a proposed agenda relative to the above negotiations for the past two weeks. For the past week we have waited patiently for a written counter proposal promised by the Lubicon Lake Band on August 25th, which was to contain a detailed statement of all items required to conclude a final settlement.

The document received this morning entitled "Reiteration of Lubicon Position on Outstanding Settlement Issues" (September 7, 1989) is merely that and contains no specifics that would advance negotiations. However, for the record, I believe it would be worthwhile at this time to deliver Canada's written position on each of the items for discussion.

Woodland Cree Band

On August 28, 1989 the Minister of Indian Affairs created the Woodland Cree Band under section 17(1) (b) of the Indian Act. 110 registered Indians of the province constitute the present band list. An additional 250 band members are seeking registration as Indians for a total of 360 members.

Of these 360 members of the Woodland Cree Band a total of 117 appear among the 477 persons listed as Lubicon Band members on October 22, 1988, the date of the Grimshaw proposal. The names of the aforesaid 117 individuals were recently delivered to the Government of Alberta by their legal counsel.

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Canada

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-2-

The Woodland Cree Chief is Melvin Laboucan. Further information is readily available from the following:

- Chief Melvin Laboucan
- Band Consultant Ray Dupres
- Band Lawyer Robert Young.

Mailing Address and Telephone Number

Woodland Cree Band  
General Delivery  
CADOTTE LAKE, Alberta  
T0H 0N0

Attention: John Cardinal  
629-3992 (w)  
629-3734 (h)

Land Matters

Canada has insisted that the registration process for the Woodland Cree Band be completed before formal negotiations on their land claim and reserve construction programme can begin. This serves two purposes - it identifies the registered Indians of the province for the purpose of Treaty 8 adhesion and a land claim settlement. It also quantifies the number of individuals who will qualify for reserve construction and socio-economic development.

Formal releases must be delivered through registered adult band members in a validation process satisfactory to Canada and Alberta. It will be imperative in any future talks involving the Lubicon Lake Band that a similar validation process be established. The Grimshaw proposal was based on 477 individual releases while Canada's formal offer assumes an on-reserve population of 450 registered Indians. Certainty as to the actual numbers must be established at an early date in order for meaningful future discussions to take place.

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### Review of December 16, 1988 Agreement

Discussions at Grimshaw were reduced to writing and were delivered to Canada as a joint proposal of Alberta and the Lubicon (attached as Schedule 1). Under that proposal 79 square miles of surface and subsurface were to be delivered in exchange for the releases of 477 band members (on the March 17, 1988 band list). These releases were to be to the satisfaction of Alberta and Canada.

117 of the 477 are members of the Woodland Cree Band who now request land apart from the Lubicon Lake Band. The same is true for an additional 10 individuals who claim land in severalty and who are represented by an Edmonton counsel. The Grimshaw proposal does not refer to Treaty 8 or severalty. However, it is noted that under Treaty 8, 477 band members would result in a 95.4 square mile reserve (including the surface and subsurface) as opposed to 79 square miles as proposed at Grimshaw, a shortfall of 16.4 square miles. Further, under Treaty 8 the 117 Woodland Cree Band members would be entitled to 23.4 square miles for a reserve.

Canada would welcome an initiative from Alberta to provide the additional 23.4 square miles of surface and subsurface for the Woodland Cree Band. Alternatively, Canada awaits the joint advice of Alberta and the Band as to how this matter is to be handled under the Grimshaw proposal.

### Surface and Subsurface Interests

In the light of recent progress in resolving surface leasehold problems, it is felt that no discussions need take place on this subject at this time. As to subsurface issues and boundary discussions, we simply await your advice as to developments.

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### Reserve Construction and Socio-economic Development

As stated earlier, Canada's standing offer for reserve construction and socio-economic development assumes a reserve population of 450 registered Indians of the province. Obviously members of the Woodland Cree Band and severalty claimants would not be part of this number.

Canada is prepared to amend its formal offer dated January 24, 1989 in order to address two concerns expressed by the Lubicon Lake Band. On the question of compensation, we invite the Band to pursue this claim in the Canadian courts while at the same time accepting our formal offer. Paragraph 8 of our offer dealing with formal releases by the Band and band members will be amended so as to expressly reserve the right to sue for compensation.

Secondly, the special socio-economic programme outlined in paragraph 5 and Schedule D of the formal offer is deleted and the following new paragraph 5 is substituted:

#### "5. Special Socio-Economic Programme

- 5.1 Provided that the Band and those entitled to adhere to treaty 8 execute releases in favour of Canada, Canada will provide \$10.0 million for a fund to promote economic development.
- 5.2 The fund will ensure that the Band has ongoing seed capital to lever project funding from public and private sources and to provide assistance to Band entrepreneurs.
- 5.3 Only the interest from the fund will be expended on a yearly basis.
- 5.4 The fund will not be considered "Indian monies" as defined in the Indian Act.

.../5

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-3-

8.6 The fund will be administered by the Cree  
Development Corp."

Cash Compensation

In the absence of a judgement from a Canadian court, Canada is not prepared to pay compensation to the Lubicon Lake Band. Alberta is, of course, free to discuss compensation with the Band for past oil and gas revenues received by the province.

Wildlife and Integrated Land Use Agreement

This is an area of provincial responsibility but obviously will have to be drafted so as to account for the Woodland Cree Band.

Self-Government Framework Agreement

A framework agreement was initiated in early January between Canada and the Band. In the absence of a full settlement, it would appear premature to advance its implementation.

We have no doubt concerning Premier Getty's bonafides in responding to the Band's request in July for the resumption of talks. However, the lack of a meaningful counter proposal today amounts to crying wolf on the part of the Band. The offer as amended remains on the table.

Yours very truly,



J. Brian Malone, Q.C.  
Federal Negotiator

Attach.

09/28/89 18:58

P03

Attachment 10

## Dispute threatens Lubicon talks

By LYNDA SHORTEN  
Journal Staff Writer

Long-delayed talks between the Lubicons and Ottawa may break down before they even start today.

Lubicon negotiator Fred Lennarson said Wednesday the band and Ottawa cannot agree on whether their discussions should be open to the media. Lennarson said the Lubicon insist that if Ottawa allows its "private media" adviser, Ken Colby, to attend the talks, all media should be allowed in.

"In the meetings there should either be no media at all, or all the media should be invited. The feds should not be in the position of simply having their own paid professional propagandist in there and then have everyone else out."

Ottawa is taking the position that

Colby is part of its team and that it won't negotiate in public, Lennarson said.

The Lubicon are scheduled to discuss their half-century-old land claims dispute with federal and provincial representatives in Edmonton today and Friday.

Band and provincial negotiators met Aug. 23, 24 and 25 in Edmonton to discuss all matters outstanding between the two parties. Lennarson said the question of provincial compensation for oil and gas revenue is not yet resolved, as it is a question for Premier Don Getty and Lubicon Chief Bernard Ominayak to settle.

Attorney General Ken Rostad was not available for comment. A department spokesman said only that the August talks "had gone well."

Talks between Ottawa and the Lubicon broke down in January when Ominayak turned down a \$45-million offer for new economic development. The band instead wants compensation for the years spent fighting for a reserve, in an amount estimated to be between \$114 and \$275 million.

Getty and Ominayak broke their stalemate over the size of the reserve last November. The two agreed to a 246-sq.-km reserve, with the band to retain oil and gas rights on 205 sq. km.

Lennarson said the province so far has not indicated the establishment of a Woodland Cree band reserve claiming the right to some of that land will change the November agreement.

09/28/89 18:57

P02

Attachment 11

Transcript of ITV News Broadcast (10:00 P.M.)  
Thursday, September 7, 1989

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Ross McLaughlin, ITV News

The Lubicon Indians say they are running out of patience. Federal officials failed to show up at a meeting today between the Band and the Province, forcing the Alberta Government to act as an intermediary. But Band officials report little progress, and suggest if Ottawa does not take them seriously, they will take matters into their own hands. Wendy Theberge reports.

Wendy Theberge, ITV News

There have been a few major breakthroughs but the fight is far from over. Today an army of Lubicon representatives met with Provincial negotiators to hammer out the final details of a settlement. But without Federal Government approval any agreement between the Province and the Indian Band is meaningless. Despite an invitation to listen in on today's talks, Federal officials refused to show up, a gesture that may push the Band into desperate action.

Last fall the Lubicons formed a human blockade to protest the lack of action from both the Provincial and Federal Governments on their land claims dispute. The blockade convinced Premier Getty to personally open up discussions. Now the Band is considering forcing Ottawa back to the table by using the same sort of tactic. A Band spokesman says they probably won't set up another blockade, but the Lubicons have something else up their sleeves.

Fred Lennarson, Lubicon Advisor

A lot of thinking has been done in that regard, but I'm not in a position to share that with you.

Theberge

And so the fight for a settlement continues. But if the Federal Government doesn't start negotiating with the Lubicons soon, the Band says the possibility of another blockade or similar potentially violent action cannot be ruled out. Wendy Theberge, ITV News.

09/28/89 19:01

P07

# Lubicon talks in doubt

By Mark Lowey

(Herald writer)

Ottawa has guaranteed the Lubicon Lake Indians another \$5 million to settle their longstanding land claim while also raising doubts about the band's membership.

About one-quarter of the people claimed by the Lubicons last year — when Premier Don Getty promised the band a 246-square-kilometre reserve — now want to be members of the new Woodland Cree band, federal spokesman Ken Colby said Friday.

The new band was approved by Ottawa last month, six months after news reports of an emerging dissident Lubicon group. Of the 477 band members claimed by the Lubicons last fall,

117 have now applied to become Woodland Cree, Colby said.

An additional 243 aboriginal people who aren't Lubicon band members are seeking to join the Woodland Cree — for a total of 360 in the new band, he added.

It's pointless for Ottawa to negotiate anymore with the Lubicons until it's clear they are who they say they are, Colby said.

Lubicon band negotiator Fred Lennarson said Ottawa's position only confirms Lubicon suspicions that the government encouraged the dissidents to undermine the rightful Lubicon leadership and its legitimate claim.

A letter from federal negotiator Brian Malone made public Friday also raises doubts whether the so-called Grimshaw Agree-

ment on a reserve — negotiated by Getty and Lubicon Chief Bernard Ominayak — will hold.

Malone pointed out that the Woodland Cree would be entitled to a 60.6-square-kilometre reserve and Alberta must provide for them, too.

Malone said Ottawa is prepared to amend its January offer to the Lubicons to provide \$10 million in cash for an economic development fund — a hike of \$5 million, according to Colby. The band would be restricted to spending the fund's annual interest.

Lennarson called the offer meaningless, because the money wouldn't enable the Lubicons to establish an economically viable community.

# Woodland Cree band recognized

By MINDELLE JACOBS  
Staff Writer

Ottawa formally recognized the Woodland Cree band yesterday amidst criticism from a native leader that the federal government has too much power to create splinter groups.

The new band, made up of about 300 members, including a group of disgruntled Lubicons, plans to elect an interim chief and councillors tonight, said Woodland Cree spokesman John Cardinal.

Indian Affairs spokesman Ken Colby said he and department lawyer Brian Malone are scheduled to meet with several band representatives and their lawyer tomorrow in Peace River to go over the formal documents.

"They undoubtedly want to schedule negotiations for a land claim. We're available at their convenience," Colby said yesterday.

But Lawrence Courtoreille, Alberta vice-chief of the Assembly of First Nations, said he's worried about the implications of Ottawa's recognition of the Woodland Cree.

Under the Indian Act, the Indian Affairs minister has the power to split existing bands to create new ones.

And a portion of the existing band's reserve or funds can be given to the new band "as the minister determines."

That section of the Indian Act should be scrapped because it gives Ottawa "exclusive power over Indian people," said Courtoreille.

"(Band chiefs) ought to be very concerned about the future of their communities and their reserves," he said yesterday.

"The minister can come and seek out disgruntled members and conquer and divide that particular tribe."

But Colby said "there would have to be compelling reasons" for Ottawa to create a new band.

The federal government created the Woodland Cree band quickly because so many of the members — about 100 former Lubicons — had valid land claims, he added.

Colby stressed Ottawa was not out to sabotage the Lubicons' land claim.

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07/30/89 19:51

P04

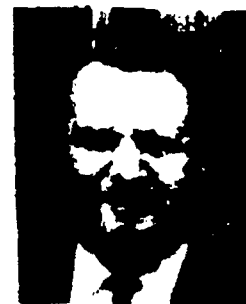
Parliamentary Office  
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HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

ROSS HARVEY  
M.P., Edmonton East



NEWS RELEASE / NEWS RELEASE / NEWS RELEASE / NEWS RELEASE / NEWS RELEASE / NEWS RELEASE

BEST AVAILABLE COPY

TO: All News Media  
FROM: Ross Harvey, M.P., Edmonton East  
RELEASE: Immediate, Wednesday, July 26, 1989  
SUBJECT: HARVEY DENOUNCES FEDERAL GOVERNMENT SABOTAGE OF LUBICON CREE BAND

OTTAWA — "The federal Government is ignoring its own procedural guidelines in a crude and vengeful attempt to sabotage the Lubicon Lake Cree Indian Band," charged Edmonton East New Democrat M.P. Ross Harvey in a prepared release today.

"And they're rushing ahead with this despicable project at the same time as literal dozens of legitimate Indian bands patiently wait for years and years to achieve reserve status and the land that goes with it.

"It is obvious to every objective observer that the federal Government has itself conjured the so-called Woodland Cree Band into existence, and has done so for the sole purpose of harassing and, if possible, destroying the Lubicon Band," he said.

Harvey noted the Government's own 1978 guidelines "Procedures for Band Amalgamation or Division" state, "2.2.1 The existing band council must be involved to ensure that it is fully aware of needs and aspirations of the members of the group(s) wishing to separate.

Said Harvey, "In fact, the Government has done the exact opposite, holding secret meetings in Peace River and resolutely excluding the existing band council from its machinations."

The policy also notes (in paragraph 1.3), "It is therefore the policy to hold a

003554

ROSS HARVEY NEWS RELEASE  
JULY 26, 1989

P. 2

"It seems that, in the flat-out race to get this spurious new band up and running by August 28, all thought of any such democratic inconvenience as a plebiscite has been jettisoned," said Harvey.

"And this all-fired haste will come as a wonder, a revelation, to those many Indian bands who have been waiting to achieve reserve status, on the strength of actual legitimate claims, for years.

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"Bands like the Oujibouganau Cree of James Bay which have been waiting since the mid-1980s for reserve land, the thousands of so-called "C-31 Indians" scattered across the country still waiting for reserve recognition, bands like the Six New Bands in northwestern Ontario who were promised reserve properties and band rights by the then-Minister David Crombie back in 1985 and who are still waiting for action on those promises -- all of these Indian peoples must be shaking their heads and wondering what the secret is to such fast, deliberate action," said Harvey.

"Well, the Lubicon Cree today know the secret: official subversion of legitimate aboriginal claims."

Harvey noted that New Democrat Indian Affairs Spokesperson Robert Skelly had written to the Minister demanding he reverse the decision to create another band, and begin the process of bargaining fairly with the Lubicon Cree.

"The entire New Democrat caucus stands behind the Lubicon Cree in this," said Harvey. "Justice and decency demand they be treated fairly by the Government."

- 30 -

FOR MORE INFORMATION: (613) 992-2289

ATTACHED: "Procedures for Band Amalgamation or Division", October 1, 1978

Re: Lubicon Cree, July 26, 1989

003555



Robert E. Skelly, M.P.  
Comex-Albarni



HOUSE OF COMMONS  
CANADA

O T T A W A  
July 26, 1989

Ottawa Office  
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Ottawa, K1A 0A8  
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Fax: (604) 748-2421

481 A South St.  
Courtenay, B.C.  
V8N 1G9  
Ph: (604) 338-1821  
Fax: (604) 338-1821

Hon. Pierre Cadieux  
Minister of Indian Affairs  
and Northern Development  
House of Commons  
Ottawa, Ont.  
K1A 0A6

Dear Mr. Cadieux,

The outstanding land claim dispute between the Lubicon people and the Federal Government is an embarrassment and an affront to Canada's reputation as a fairminded nation.

This morning it was reported that your department has secretly entered into negotiations with a so-called "dissident" group of people with the intent of creating another band in the disputed Lubicon Area.

This act was taken despite the very explicit directives of your own department (see attached) whereby a plebiscite and full consultation with all affected parties is required.

What is more, your department has unilaterally decided this course of action while bands, communities, and "C-31 reinstatées" have been pressing for just such action over the years. In every case, your department has stalled wherever possible.

It is cynical in the extreme to expect Canadians to believe that you are now acting out of some altruistic obligation in dealing with band "dissidents". Canadians will not forget that two short months ago, the Lubicon democratically elected their leadership. The Lubicon have made their choice of representatives and it is your responsibility to respect that choice. In following the course as reported this morning, it would appear that your department is engaging in the blatantly unfair bargaining tactics.

As a former Minister of Labour you should be the first to know that it is an unfair labour practice to ignore a democratically elected bargaining group in favour of a minority, that for whatever reasons will accede to a quick settlement.

☎ 403 437 0719

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07-11-89 16:04

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P. 2 -

- 2 -

The tactics employed by your administration are a disgrace.

The old strategies of "divide and conquer" in such disputes have been discredited and rejected in most advanced nations for some time now. It is time for you and your department to begin negotiating in a manner that is fair and honest.

I would ask that you personally examine this development and reverse the decision to create another band. You have an obligation to bargain fairly, and I would ask that you begin that process.

Sincerely,

*Robert Skelly*

*Per/Rm* Robert E. Skelly, MP  
NDP Indian Affairs Spokesperson

*File*

**ACTION  
SUITE A DONNER**

ACC	REF	DATE
FILE	DOSSIER	
45 CDA-13-1-3- <i>Kulbacon</i>		
<i>Waher Bank</i>		

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---MANIFESTATION EN FAVEUR DES AMERINDIENS DU CDA

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Lubicon Lake Band			

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50 ET 200 PARTICIPANTS, AVEC PANCARTES ET KIOSQUES D INFOS. POLICE  
SERA SUR PLACE POUR ASSURER ORDRE.

2. CONTRAIREMENT A CE QUI AVAIT ETE LE CAS POUR PREMIERE MANIFESTATION  
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NOUS POUR DEMANDER A RENCONTRER MEMBRE DE AMB POUR LUI REMETTRE PETITION

3. NOUS VOUS FERONS RAPPORT SUR DEROULEMENT DE MANIFESTATION ET NOMBRE  
DE PARTICIPANTS.

CCC/041 101635Z ULGR5625

ACC	REF	DATE
FILE	DOSSIER	
45-CPA-12-1-3		
Lubicon Lake Band		

**ACTION**  
**SUITE A DONNER**

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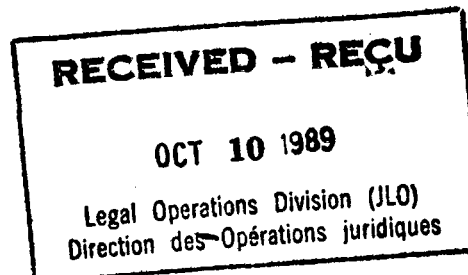
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---HUMAN RIGHTS CTTEE: COMPLAINT BY LUBICON LAKE BAND

LATEST LUBICON SUBMISSION (SUPPLEMENT NO. 12 - 50 PAGES PLUS APPROX 50 PAGES ANNEXES) DATED OCT 2 WAS RECEIVED BY SECT OCT 6 AND WE ARE FORWARDING TODAY BY DHL COURIER (EXPECTED ARRIVAL EXTOTT OCT12) TO JLO HOLMES.

2.GIVEN VOLUME OF NEW MATERAIL BEFORE CTTEE,CENTRE CONTACT MOLLER IS NOW EXPRESSING SERIOUS DOUBTS THAT CTTEE WILL BE IN POSITION TO EXPRESS FINAL VIEWS ON THIS CASE AT OCT-NOV SESSION.BADLY STRAINED CONFERENCE SERVICES WILL NOT/NOT LIKELY BE ABLE TO TRANSLATE AND REPRODUCE ALL MATERAIL ON TIME AND,IN MOLLERS VIEW, COMPLEXITY OF CASE DEMANDS THAT SECT ANALYSIS UNDERPINNING ANY DRAFT DECISION NOT/NOT BE PREPARED HASTILY.IN THESE CIRCUMSTANCES, MOLLER SUGGESTED THAT CTTEE MIGHT IN NOV DECLARE FILE CLOSED AND SET FOLLOWING SESSION AS TARGET DATE FOR DECISION.

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FILE/DOSSIER: 45-13-2-LUBICON

OCT 1 1989

PAGE 1 OF/DE 2

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TO/A EXTOTT JLO

INFO JUSTOTTWEISER 34 28 OTT

DISTR IMH

REF YOURFAX JLO1732 25SEP

**ACTION  
SUITE A DONNER**

45-CDA-13-1-3-LUBICON  
LAKE BAND

---COMMUNICATION OF LUBICON LAKE BAND TO HUMAN RIGHTS CTTEE

ATTACHED IS COPY OF NOTE UNDER WHICH SUPPLEMENT TO LAST GOVT SUBMISSION WAS HANDED TO CENTRE FOR HUMAN RIGHTS (MOLLER) TODAY. WHILE APPRECIATING REASONS UNDERLYING DECISION TO MAKE THIS FURTHER SUBMISSION, MOLLER WINCED AT IMPLICATIONS THIS MIGHT HAVE FOR FURTHER PROLONGATION OF CTTEES DELIBERATIONS. CTTEE WAS ANXIOUS TO COME TO FINAL RESOLUTION OF MATTER BUT NEW SUBMISSION MIGHT OFFER PRETEXT TO LUBICON AND/OR SOME CTTEE MEMBERS TO ARGUE FOR FURTHER EXTENSION. NEW MATERIAL WOULD IN ANY EVENT BE FAXED IMMEDIATELY TO LUBICON COUNSEL. CENTRE STILL AWAITS LUBICON QUOTE FINAL UNQUOTE SUBMISSION, DUE BY BEGINNING OF NEXT WEEK. WE WILL ADVISE AS SOON AS THIS IS RECEIVED.

2 11:51 68JES 82

DRAFTER/REDACTEUR

R. HYNES

TELEPHONE NBR

225

APPROVED/APPROUVE

T. HAMMOND

The Permanent Mission of Canada  
to the United Nations



La Mission Permanente du Canada  
auprès des Nations Unies

No. 6160

The Permanent Mission of Canada to the Office of the United Nations in Geneva presents its compliments to the Secretary General of the United Nations (Centre for Human Rights) and has the honour to submit the attached supplement to Canada's September 1, 1989 submission to the Human Rights Committee in respect of the communication of the Lubicon Lake Band pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights. The Government of Canada considers it important that the Committee be apprised of the information contained in the attached material in view of its bearing on questions which have played a central role in previous submissions on this matter.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

OF/DE

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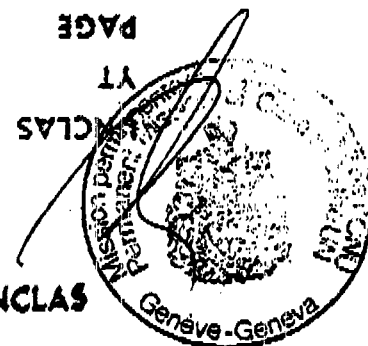
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28 September, 1989.

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PAGE 2 OF/DE 2





External Affairs  
Canada

Affaires extérieures  
Canada

Accession/Référence

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File/Dossier

45-CD-13-1-3

-LUBICON LAKE BAND

MESSAGE

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Alignez le premier caractère de la Sécurité sous cette flèche

SECURITY  
SÉCURITÉ

UNCLASSIFIED

F A C S I M I L E

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TO GENEV

INFO

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SUBJ/SUJ

DISTR IMH

REF YOUR TRANS NOTE 6076 04SEP89

---COMMUNICATION OF LUBICON LAKE BAND TO UN HUMAN RIGHTS CTTEE

ATTACHED IS SELF-EXPLANATORY SUPPLEMENT TO LAST CDN

SUBMISSION(YOUR REF NOTE)ON SUBJ COMPLAINT.THOUGH DEADLINE FOR

CDN SUBMISSION HAS PASSED,IT WAS FELT IMPORTANT THAT WE ADVISE

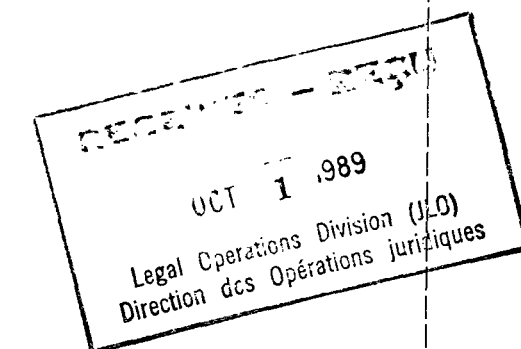
HUMAN RIGHTS CTTEE OF LATEST DEVELOPMENT,ESPECIALLY GIVEN

IMPORTANCE ATTACHED TO RESUMPTION OF NEGOTIATIONS IN PREVIOUS CDN

SUBMISSION.

2.GRATEFUL YOU SUBMIT ATTACHED TO CENTRE FOR HUMAN RIGHTS ASAP.

COMM CENTRE: PLEASE FAX WITH ATTACHED SEVEN PAGES



DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

JOHN HOLMES

SIG

JLO

996-5407

SIG

ROBERT ROCHON

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2/8

SUPPLEMENT TO CANADA'S SEPTEMBER 1, 1989 SUBMISSION  
TO THE U.N. HUMAN RIGHTS COMMITTEE IN RESPECT  
OF THE LUBICON LAKE COMMUNICATION

The Government of Canada wishes to advise the Committee of recent developments in the negotiations between the Lubicon Lake Band and Canada. As was indicated at page 6 of Canada's most recent submission, tripartite discussions between the province of Alberta, the federal government and the Band were scheduled for the end of August and early September. In this regard, the Band undertook to provide to Canada and Alberta a comprehensive counterproposal to the federal government's outstanding offer. As well, the Band undertook to provide a list of the persons it represented in the negotiations.

On September 7, 1989 - the scheduled date for commencement of negotiations between the federal government and the Lubicon - Canada was advised that a counterproposal had not been prepared by the Band, nor would it provide the federal government with the list of persons it represented. As well, the Band stated that it would not negotiate in the presence of Mr. Ken Colby, one of the members of Canada's negotiating team, because he also acts as the government's media spokesperson.

As a result of the Band's refusal to conduct a meaningful discussion of its claims, negotiations were unfortunately not resumed. Attached as Appendix 1 is a letter from the federal negotiator to the province's representative, outlining Canada's position.

Indian and Northern  
Affairs CanadaAffaires indiennes  
et du Nord Canada

APPENDIX 1.

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3/8

September 8, 1989

Your file Votre référence

Our file Notre référence

Mr. John T. McCarthy  
MacLeod McManus  
2200 Bow Valley Square 4  
250 - 6th Avenue S.W.  
CALGARY, Alberta  
T2P 3H7

Dear Mr. McCarthy:

Lubicon Lake Band Land Claim Negotiations

In your capacity as the Premier's moderator/facilitator, you may wish to deliver a copy of this letter to the Band.

As you are aware Canada has been in receipt of a proposed agenda relative to the above negotiations for the past two weeks. For the past week we have waited patiently for a written counter proposal promised by the Lubicon Lake Band on August 25th, which was to contain a detailed statement of all items required to conclude a final settlement.

The document received this morning entitled "Reiteration of Lubicon Position on Outstanding Settlement Issues" (September 7, 1989) is merely that and contains no specifics that would advance negotiations. However, for the record, I believe it would be worthwhile at this time to deliver Canada's written position on each of the items for discussion.

Woodland Cree Band

On August 28, 1989 the Minister of Indian Affairs created the Woodland Cree Band under section 17(1) (b) of the Indian Act. 110 registered Indians of the province constitute the present band list. An additional 250 band members are seeking registration as Indians for a total of 360 members.

Of these 360 members of the Woodland Cree Band a total of 117 appear among the 477 persons listed as Lubicon band members on October 22, 1988, the date of the Grimshaw proposal. The names of the aforesaid 117 individuals were recently delivered to the Government of Alberta by their legal counsel.

.../2

Canada

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-2-

The Woodland Cree Chief is Melvin Laboucan. Further information is readily available from the following:

- Chief Melvin Laboucan
- Band Consultant Ray Dupres
- Band Lawyer Robert Young.

Mailing Address and Telephone Number

Woodland Cree Band  
General Delivery  
CADOTTE LAKE, Alberta  
T0H 0N0

Attention: John Cardinal  
629-3992 (w)  
629-3734 (h)

Land Matters

Canada has insisted that the registration process for the Woodland Cree Band be completed before formal negotiations on their land claim and reserve construction programme can begin. This serves two purposes - it identifies the registered Indians of the province for the purpose of Treaty 8 adhesion and a land claim settlement. It also quantifies the number of individuals who will qualify for reserve construction and socio-economic development.

Formal releases must be delivered through registered adult band members in a validation process satisfactory to Canada and Alberta. It will be imperative in any future talks involving the Lubicon Lake Band that a similar validation process be established. The Grimshaw proposal was based on 477 individual releases while Canada's formal offer assumes an on-reserve population of 450 registered Indians. Certainty as to the actual numbers must be established at an early date in order for meaningful future discussions to take place.

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Review of December 16, 1988 Agreement

Discussions at Grimshaw were reduced to writing and were delivered to Canada as a joint proposal of Alberta and the Lubicons (attached as Schedule 1). Under that proposal 79 square miles of surface and subsurface were to be delivered in exchange for the releases of 477 band members (on the March 17, 1988 band list). These releases were to be to the satisfaction of Alberta and Canada.

117 of the 477 are members of the Woodland Cree Band who now request land apart from the Lubicon Lake Band. The same is true for an additional 10 individuals who claim land in severalty and who are represented by an Edmonton counsel. The Grimshaw proposal does not refer to Treaty 8 or severalty. However, it is noted that under Treaty 8, 477 band members would result in a 95.4 square mile reserve (including the surface and subsurface) as opposed to 79 square miles as proposed at Grimshaw, a shortfall of 16.4 square miles. Further, under Treaty 8 the 117 Woodland Cree Band members would be entitled to 23.4 square miles for a reserve.

Canada would welcome an initiative from Alberta to provide the additional 23.4 square miles of surface and subsurface for the Woodland Cree Band. Alternatively, Canada awaits the joint advice of Alberta and the Band as to how this matter is to be handled under the Grimshaw proposal.

Surface and Subsurface Interests

In the light of recent progress in resolving surface leasehold problems, it is felt that no discussions need take place on this subject at this time. As to subsurface issues and boundary discussions, we simply await your advice as to developments.

.../4

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### Reserve Construction and Socio-economic Development

As stated earlier, Canada's standing offer for reserve construction and socio-economic development assumes a reserve population of 450 registered Indians of the province. Obviously members of the Woodland Cree Band and severalty claimants would not be part of this number.

Canada is prepared to amend its formal offer dated January 24, 1989 in order to address two concerns expressed by the Lubicon Lake Band. On the question of compensation, we invite the Band to pursue this claim in the Canadian courts while at the same time accepting our formal offer. Paragraph 8 of our offer dealing with formal releases by the Band and band members will be amended so as to expressly reserve the right to sue for compensation.

Secondly, the special socio-economic programme outlined in paragraph 5 and Schedule D of the formal offer is deleted and the following new paragraph 5 is substituted:

#### "5. Special Socio-Economic Programme

- 5.1 Provided that the Band and those entitled to adhere to Treaty 8 execute releases in favour of Canada, Canada will provide \$10.0 million for a fund to promote economic development.
- 5.2 The fund will ensure that the Band has ongoing seed capital to lever project funding from public and private sources and to provide assistance to Band entrepreneurs.
- 5.3 Only the interest from the fund will be expended on a yearly basis.
- 5.4 The fund will not be considered "Indian monies" as defined in the Indian Act.

.../5

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-5-

5.5 The fund will be administered by the Cree Development Corp."

#### Cash Compensation

In the absence of a judgement from a Canadian court, Canada is not prepared to pay compensation to the Lubicon Lake Band. Alberta is, of course, free to discuss compensation with the Band for past oil and gas revenues received by the province.

#### Wildlife and Integrated Land Use Agreement

This is an area of provincial responsibility but obviously will have to be drafted so as to account for the Woodland Cree Band.

#### Self-Government Framework Agreement

A framework agreement was initialled in early January between Canada and the Band. In the absence of a full settlement, it would appear premature to advance its implementation.

We have no doubt concerning Premier Getty's bonafides in responding to the Band's request in July for the resumption of talks. However, the lack of a meaningful counter proposal today amounts to crying wolf on the part of the Band. The offer as amended remains on the table.

Yours very truly,



J. Brian Malone, Q.C.  
Federal Negotiator

Attach.

8/8

ALBERTA/LUBICON BAND PROPOSAL

1. Alberta is prepared to transfer to Canada the administration and control of 70 square miles of provincial Crown land including mines and minerals, to enable Canada to establish an Indian Reserve for the use and benefit of the Lubicon Lake Indian Band and its members.
2. Alberta is prepared to sell to Canada at fair market value the fee simple interest, including mines and minerals, to a further 16 square miles for use by the Lubicon Band.
3. Canada will be responsible for the compensation of all third party interests, surface and subsurface, within the 70 square mile area in order that the lands are rendered "unoccupied" prior to transfer by Alberta to Canada.
4. Canada will be responsible for the compensation of all third party surface interests within the 16 square mile area.
5. Any arrangements concerning the surface of the 16 square mile area will be between the Lubicon Band and Canada. Alberta will retain ownership and control of mines and minerals. No development will occur on these lands without the consent of both Alberta and the Band.
6. The issue referred to in 1 and 2 above will approximate the lands identified in schedule 1, 2 and 3 attached, the precise boundaries to be subject to further negotiations.
7. Notwithstanding 6, it is understood that, generally, the lands to be transferred will not involve currently producing oil and gas interests.
8. Notwithstanding 6, it is understood that Alberta will retain access to Lubicon Lake.
9. The Band and its members will provide a full and final release to Canada and Alberta, in a manner satisfactory to Canada and Alberta, with respect to the claims of all of the 477 people on the Band's membership list as of March 17, 1988.



External Affairs  
Canada

Affaires extérieures  
Canada

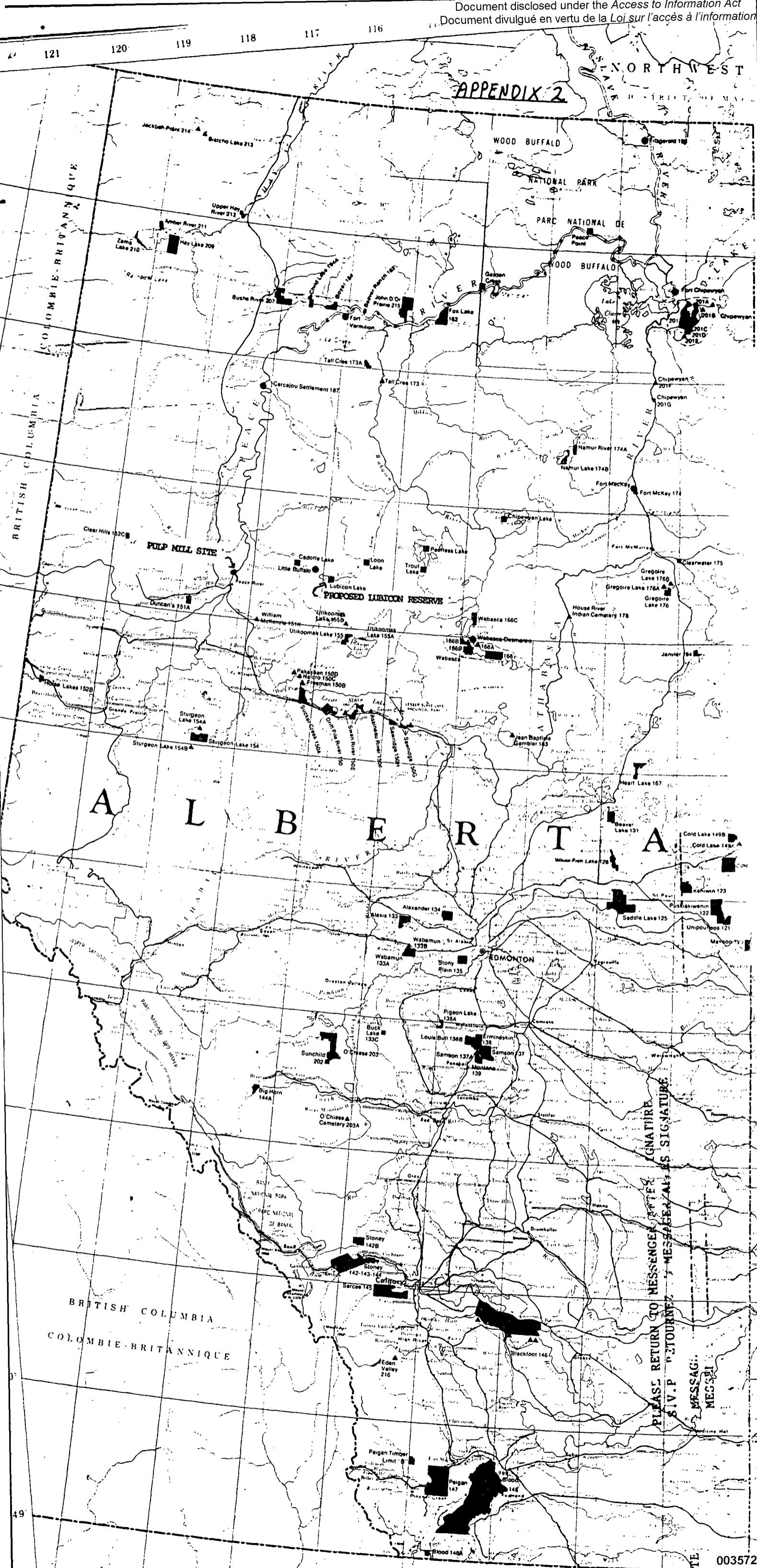
**UNCLASSIFIED**  
**NON CLASSIFIÉ**  
MESSAGE

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

Accession/Référence
File/Dossier 45-013-1-3-Subrin OTT 001/02-Subrin
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SECURITY SÉCURITÉ	UNCLASSIFIED	F A C S I M I L E
FM/DE	FM EXTOTT JLO1647 8SEP89	
TO/À	TO GENEV	
INFO		
DISTR	REF OUR FAX JLO-1597 30AUG	
REF	---COMMUNICATION OF LUBICON LAKE BANK TO UN HUMAN RIGHTS CTTEE	
SUBJ/SUJ	WE ATTACH APPENDIX 2 OF ABOVE REF COMMUNICATION.	
COMM CENTRE: PLEASE FAX WITH ATTACHED PAGE		

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
JASON REISKIND/tb SIG	JLO	992-2002	ROBERT ROCHON



PLEASE RETURN TO MESSENGER AFTER  
SIGNATURE  
DATE  
MESSAGE  
MESSEGE  
S.V.P. RETOURNER  
A L'ES SIGNATURE

J. Masson - 9/1/89

957-4937 JR Justice 6/4/89

(Map-annex 3-expected)

tomorrow 11 Sept).

JR

fake  
JL

**ACTION**  
**SUITE A DONNER**

SEP 3 1989

Legal Operations Division (JLO)

ACC 1615975  
DATES juridiques  
FILE 45-CDA-13-1-3-LUBICON DOSSIER

UNCLASSIFIED

FM GENEV YTGR6074 04SEP89

TO EXTOTT JLO

REF YOURTEL JLO1597 30AUG

---COMMUNICATION OF LUBICON LAKE BANK TO UN HUMAN RIGHTS

CTTEE UNDER OPTIONAL PROTOCOL

WE DELIVERED SUBMISSION TO MOLLER (HEAD OF COMMUNICATIONS, CENTRE FOR HUMAN RIGHTS) SEPT 01 UNDER COVER OF NOTE DATED 31 AUGUST.

(COPY OF SUBMISSION FOLLOWS TO JLO BY BAG). MOLLER REMINDED US THAT LATEST CTTEE DECISION STIPULATES AUTHOR WILL BE GIVEN UNTIL 02 OCTOBER TO COMMENT ON GOVTS SUBMISSION. HE ASSURED US WE WOULD BE ADVISED ASAP ON RECEIPT OF ANY LUBICON SUBMISSION BUT PREFERRED NOT/NOT TO SPECULATE ON PROSPECTIVE CONSEQUENCES OF ANY LUBICON EFFORT TO RAISE/ADDRESS NEW ISSUES.

2. WE ENCOURAGED MOLLER TO TAKE A CLOSE PERSONAL INTEREST IN THIS MATTER AND HE RESPONDED BY SAYING THAT PROBABLY HE, RATHER THAN STAFF MEMBER DE ZAYAS WHOSE ADVICE TO US ON THIS DOSSIER HAS BEEN ERRATIC, WILL DO THE DRAFTING FOR SECRETARIAT WHEN IT PLACES OPTIONS BEFORE CTTEE.

3. WE AWAIT RECEIPT OF ANNEX 3 ASAP. THERE IS SOME URGENCY TO THIS AS CENTRE MUST FORWARD MATERIAL TO LUBICON COUNSEL.

UUU/151 041524Z YTGR6074