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File No. Dossier 45-CDA-13-1-3-LUBICON LAKE BAND
Volume 13 From-De 89-04-15 To-À 89-05-31
VOLS ACCESSION 145 193

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

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OF
EXTERNAL AFFAIRS

MINISTÈRE
DES
AFFAIRES EXTÉRIEURES

TITLE—TITRE:

SOCIAL AFFAIRS

HUMAN RIGHTS

POLICY AND PLANS CANADA

COMPLAINTS TO UNITED NATIONS ABOUT VIOLATION IN CANADA
LUBICON LAKE BAND

AFFAIRES SOCIALES

DROITS DE L'HOMME

PRINCIPES ET PROJETS ---CANADA

PLAINTES AUX NATIONS UNIES AU SUJETS DES VIOLATIONS
AU CANADA
LIBICON LAKE BAND

Retention period—Période de retention:

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Government of Canada
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INFO

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---LUBICON COMMUNICATION TO UN HUMAN RTS CMMTTE

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PLS PASS ATTACHED TO JOHN T.HOLMES.

SUBJ/SUJ

2.COMM CENTRE, PLEASE FAX WITH ATTACHED 10 PAGES.

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

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APPROVED/APPROUVÉ

J. REISKIND/tb
SIG

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992-2002

SIG ROBERT J. ROCHON

003018

Department of Justice
CanadaMinistère de la Justice
Canada

Security Classification - Cote de sécurité

MEMORANDUM/NOTE DE SERVICE

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File number - numéro de dossier

295310-3

Date

May 30, 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

Attached is a draft response to the most recent submission of the Lubicon Lake Band in the above-noted matter. I would appreciate your reviewing this document and contacting me with any comments you might have by June 2, 1989. I can be reached at 957-4937.

Thank you for your assistance in this matter.



Irit Weiser

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MAY 30 89

Legal Operations Division (JLO)
Direction des Opérations juridiques

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**COMMENTS OF THE GOVERNMENT OF CANADA ON THE FURTHER RESPONSE
OF CHIEF BERNARD OMINAYAK AND THE LUBICON LAKE BAND
DATED MARCH 21, 1989 TO THE HUMAN RIGHTS COMMITTEE**

I. GENERAL

The Secretary-General of the United Nations, in his note no. G/SO 215/51 CANA (38) 167/1984 dated May 5, 1989, transmitted to the Government of Canada the further comments of the communicant dated March 21, 1989. In reply, the Government of Canada submits the following observations.

II. EXHAUSTION OF DOMESTIC REMEDIES

The Lubicon Lake Band has repeatedly alleged that no effective domestic remedies are available in Canada to redress violations of the Covenant that the Band claims to be a victim of. In this regard, the Band has incorrectly and misleadingly accused the Government of Canada of negotiating in bad faith. For the assistance of the Committee, the demands of the communicant and the responses of the Canadian and Alberta governments are summarized in a chart attached as Appendix "A" to this submission.

The most recent negotiations between the Lubicon Lake Band and the Government of Canada took place from November 1988 to January 1989. During that time, the Canadian government met each of the communicant's demands (with the exception of general

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- 2 -

compensation which the Government of Canada rejects as having no moral or legal basis whatsoever) either in full or to the extent that equal treatment with other Canadian bands was approximated or exceeded. For example, the communicant's demands for land, housing, water and sewage services, electrification, roads, and a school were fully agreed to by the federal government. The standard Canada offered to meet in the provision of these facilities and services was the same high standard applied to all Canadian communities.

The Government of Canada did refuse certain demands of the Band, such as a request for an indoor ice arena and a swimming pool. Expenditures on such items could not be justified by the federal government in the face of the needs of other Indian communities for basic services, such as improved housing and water systems.

The major point of contention between the Government and the communicant was a general and unspecified claim by the Band for compensation. In an attempt to permit resolution of the matters agreed upon between the parties, the Government of Canada put forward a proposal that would have enabled the Band to accept Canada's offer in its entirety and still pursue the claim for general compensation in Canadian courts. The Band refused this proposal, thus depriving, at least in the immediate future, its

- 3 -

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members of a permanent land base with attendant mineral rights, new housing with all related services, a new school, self-government, and wildlife management participation over a large area. Prudent management of the items contained in the offer could easily have resulted in a high level of meaningful future employment for members of the Band. In sum, the Band was offered the means to maintain its culture, control its way of life and achieve economic self-sufficiency. These means could only be offered to the Band, they could not be imposed.

Finally, it should be noted that to have met the demands of the Band to the extent demonstrated by Canada's formal offer, is not consistent with the Band's allegations of negotiating in bad faith. Bad faith negotiations by either the Band or Canada would not have lasted six weeks, resulted in such a comprehensive offer, nor seen so many of the Band's demands agreed to.

The Government of Canada's offer remains open for acceptance by the Band. It represents in itself an effective remedy to the violations of the Covenant alleged by the Band. In addition, two court actions commenced by the Band are still outstanding. One action was commenced in the Federal Court of Canada against the federal government; the other in the Alberta Court of Queen's Bench against the province and certain private corporations. (See Canada's communication dated May 31, 1985 at pages 2-7 and

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- 4 -

October 7, 1987 at pages 4-9). Pursuant to article 5(2)(b) of the Optional Protocol, Canada has a right to require that effective domestic remedies be exhausted prior to a communication being addressed by the Committee.

III. PROCESS

The Human Rights Committee, in its decision dated August 6, 1987, declared the communication of the Lubicon Lake Band admissible, not on the basis of Article 1 (as alleged by the Band), but insofar as the communication may raise issues under article 27 or other articles of the Covenant. In its submission of October 7, 1987, the Government of Canada requested the Committee to review its decision on admissibility pursuant to Rule 93(4) of the Provisional Rules. Additionally, the Government of Canada requested that if the Committee maintained its decision on admissibility, the Committee identify the specific article(s), allegations and evidence on which its decision was based. It is, of course, impossible to respond to the substance of the Band's claim without this information being specified. The Government of Canada is still awaiting the Committee's response on these issues, so that if necessary, a response on the merits of the claim can be prepared.

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IV. CONCLUSIONS

The Government of Canada submits that the offer outlined above, as well as the ability of the Band to pursue the unresolved issue of general compensation in the courts, amounts to an effective domestic remedy. Additionally, the Band has not pursued to completion the two court actions which it has already commenced. Consequently, it is submitted that effective domestic remedies have not been exhausted as required by article 5(2)(b) of the Optional Protocol, and thus, the communication should be declared inadmissible by the Committee. If, on the other hand, the Committee maintains that the communication is admissible, the Government of Canada is awaiting the Committee's identification of the article(s) and evidence on which the admissibility decision is based so that a response on the merits may be prepared.

PRINCIPAL DEMANDS OF THE LUBICON LAKE BAND AND THE RESPONSE OF THE CANADIAN GOVERNMENT

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<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Quantum of Land</u>	95 square miles	- to give effect to Band/Province agreement	- agreed to Band demand for 95 sq.mi.
<u>Mineral Rights</u>	Full on 95 sq.mi. - agreed to Provincial offer of mineral rights on 79 sq.mi.	- Canada proposed full mineral rights to 95 sq.mi. subject to agreement by Band and Province.	- full mineral rights to 79 sq.mi.
<u>Self-Government</u>	Band sought approval for its proposal for self-government.	Band and Canada agreed to a self-government framework agreement.	Not involved.
<u>Location of Reserve</u>	Location to be around Lubicon Lake, Alberta.	Canada agreed.	Agreed (final minor boundary adjustments still required).

- 2 -

P. 9/11

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MAY 30 '89 16:38 DEPT OF JUSTICE OTTAWA

<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Membership</u>	Band sought: a) control over its membership b) no major division between status of its members	a) agreed to by Canada in 1986 b) Canada agreed to "fast track" registration in accordance with Canadian law. It is likely that more than 98% of Band members are registerable as Indians, hence division problem non-existent. - Band/Province agreement reduced importance of membership in calculation of land quantum.	Not involved.
<u>Hunting and Trapping</u>	Control over hunting and trapping.	Not involved	Agreement in principle reached.
<u>Construction of a Community</u>	Construction of a new community.	Canada agreed to fund a single family house for each family with attendant infrastructure (sewer, water, electricity, gas, roads), a school, and principal Band building (office, health centre, community hall, hall, firehall and truck), plus planning and management.	Not involved.

- 3 -

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<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Trappers' Assistance</u>	Band sought mechanism to assist trappers maintain way of life.	Canada offered \$500,000 trust fund to augment incomes.	Position unknown to Canada. Negotiations ongoing.
<u>Economic Self-sufficiency</u>	Band sought means to economic self-sufficiency.	Canada offered package valued at \$10.2 million which, if prudently managed, would see very high level of meaningful employment.	Additional support possible but not explored while Canada party to discussions.
<u>Band Costs in Presenting Claim</u>	Not specified in detail.	Canada has provided \$1,814,000 to assist Band to date.	Position unknown to Canada. Negotiations ongoing.
<u>Compensation</u>	Band position has varied but thought to be \$114-275,000,000 from Canada. Amount sought from Province is unknown to Canada.	Canada did not agree to this claim. Canada gave Band option of accepting all of its offer and pursuing compensation in court. This was rejected.	Position of Province not explored while Canada was present.

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OUTLINE OF ISSUES IN THE LUBICON LAKE BAND CASE AND
THE GOVERNMENT OFFER

ISSUES

Impairment of way of life
and economic development

Impairment of way of life
and cultural, social and
political development

GOVERNMENT OFFER

- Reserve lands with full mineral rights over most of these lands
- Agreement-in-principle on hunting and trapping management
- Trust fund for trappers' assistance with other on-going negotiations
- Employment package valued at \$10.2 million
- Option of pursuing compensation through courts

- See items above on hunting and trapping
- Construction of a community with single-family housing for each family, infrastructure of sewers, water, electricity, gas, roads, school, and band building with office, health centre, community hall and firehall
- Control over membership provided
- Agreement on a self-government framework with negotiations to follow, similar to process leading to legislative arrangements for self-government with other communities

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FILE/DOSSIER: 45-13-3-LUB LAKE

**ACTION
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PAGE 1 OF/DE 2

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DISTR MINA JFB JCD IFB IMD IMH

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The Permanent Mission of Canada



La Mission Permanente du Canada

7/2

Note No:3895/89

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The Permanent Mission of Canada presents its compliments to the Secretary-General of the United Nations (Centre for Human Rights) and, further to the latter's Note No. 0/00 215/81, OAHX (30) 167/1094 of 5 May 1989, has the honour to advise that the Government of Canada intends to make a further written submission to the Human Rights Committee regarding the communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band vs Canada) under the Optional Protocol to the International Covenant on Civil and Political Rights.

The Government of Canada considers that this further submission, to be conveyed to the Centre as soon as possible, could have an impact on the Committee's deliberations in this matter and therefore requests that the Committee have an opportunity to review it before making any decision.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Secretary-General of the United Nations (Centre for Human Rights) the assurances of its highest consideration.

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Geneva, May 31, 1989





External Affairs
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MESSAGE

Accession/Référence

File/Dossier

45-CDA-13-1-3

Lubicon Lake Band

11
Band

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

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DISTR JLO JCD IMD IEB JFB

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ATTACHED FOR YR REVIEW AND COMMENTS IS DRAFT CDN COMMUNICATION FOR
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(COMCENTKE PLEASE FAX THE ATTACHED
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D. LAVERMORE

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Department of Justice
Canada

Ministère de la Justice
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MEMORANDUM/NOTE DE SERVICE

Security Classification - Cote de sécurité

File number - numéro de dossier

295310-3

Date

May 30, 1989

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FROM/DE: Counsel
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Ivan Whitehall - Room: 325 (Fax: (403) 329-5039)
Martin Freeman - Room: 232

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c.c. D. Martin Low

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ISSUES

GOVERNMENT OFFER

Impairment of way of life
and economic development

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9/11
PRINCIPAL DEMANDS OF THE LUBLOON LAKE BAND AND THE RESPONSE OF THE CANADIAN GOVERNMENT

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- 2 -

<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Membership</u>	<p>Band sought:</p> <p>a) control over its membership</p> <p>b) no major division between status of its members</p>	<p>a) agreed to by Canada in 1986</p> <p>b) Canada agreed to "fast track" registration in accordance with Canadian law. It is likely that more than 95% of Band members are registerable as Indians, hence division problem non-existent.</p> <p>- Band/Province agreement reduced importance of membership in calculation of land quantum.</p>	Not involved.
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Human Rights Law Section

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REQUESTED FOR - DEMANDÉ POUR

May 30, 1989

AUTHORIZED BY - AUTORISÉ PAR

DATE

May 30, 1989

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Communication of the Lubicon Lake Band to the
UN H.R.C. under the Optional Protocol

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Fred Caron - 957-5750 ✓
Michael Hudson - 957-1587
Marilyn Whitaker - 994-7043 ✓
Bob Coulter - 997-1587
John Holmes - 990-8688
James Trottier - 996-9332
Ivan Whitehall - (403) 329-5039

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MESSAGE

Align first character of Security Classification under this arrow
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FM/DE

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TO/À

TO PRMNY DELBY 010900

INFO

DISTR

---LUBICON COMMUNICATION TO UN HUMAN RTS CMMTTE

REF

PLS PASS ATTACHED TO JOHN T.HOLMES.

SUBJ/SUJ

2.COMM CENTRE,PLEASE FAX WITH ATTACHED 10 PAGES.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

J. REISKIND/tb
SIG

JLO

992-2002

SIG ~~ROBERT J. ROCHON~~

003043

Department of Justice
CanadaMinistère de la Justice
Canada

Security Classification - Cote de sécurité

File number - numéro de dossier

295310-3

Date

May 30, 1989

MEMORANDUM/NOTE DE SERVICE

TO/À: Distribution

FROM/DE: Counsel
Human Rights Law SectionSUBJECT/OBJET: Communication of the Lubicon Lake Band to the UN
Human Rights Committee under the Optional Protocol

Comments/Remarques

Attached is a draft response to the most recent submission of the Lubicon Lake Band in the above-noted matter. I would appreciate your reviewing this document and contacting me with any comments you might have by June 2, 1989. I can be reached at 957-4937.

Thank you for your assistance in this matter.



Irit Weiser

Distribution: Fred Caron - Fax: 957-5750
Michael Hudson - Fax: 957-1587
Marilyn Whitaker - Fax: 994-7043
Bob Coulter - Fax: 997-1587
John Holmes - Fax: 990-8688
James Trottier - Fax: 996-9332
Ivan Whitehall - Room: 325 (Fax: (403) 329-5039)
Martin Freeman - Room: 232

IW/dp

c.c. D. Martin Low

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MAY 30 89

Legal Operations Division (JLO)
Direction des Opérations juridiques

**COMMENTS OF THE GOVERNMENT OF CANADA ON THE FURTHER RESPONSE
OF CHIEF BERNARD OMINAYAK AND THE LUBICON LAKE BAND
DATED MARCH 21, 1989 TO THE HUMAN RIGHTS COMMITTEE**

I. GENERAL

The Secretary-General of the United Nations, in his note no. G/SO 215/51 CANA (38) 167/1984 dated May 5, 1989, transmitted to the Government of Canada the further comments of the communicant dated March 21, 1989. In reply, the Government of Canada submits the following observations.

II. EXHAUSTION OF DOMESTIC REMEDIES

The Lubicon Lake Band has repeatedly alleged that no effective domestic remedies are available in Canada to redress violations of the Covenant that the Band claims to be a victim of. In this regard, the Band has incorrectly and misleadingly accused the Government of Canada of negotiating in bad faith. For the assistance of the Committee, the demands of the communicant and the responses of the Canadian and Alberta governments are summarized in a chart attached as Appendix "A" to this submission.

The most recent negotiations between the Lubicon Lake Band and the Government of Canada took place from November 1988 to January 1989. During that time, the Canadian government met each of the communicant's demands (with the exception of general

- 2 -

compensation which the Government of Canada rejects as having no moral or legal basis whatsoever) either in full or to the extent that equal treatment with other Canadian bands was approximated or exceeded. For example, the communicant's demands for land, housing, water and sewage services, electrification, roads, and a school were fully agreed to by the federal government. The standard Canada offered to meet in the provision of these facilities and services was the same high standard applied to all Canadian communities.

The Government of Canada did refuse certain demands of the Band, such as a request for an indoor ice arena and a swimming pool. Expenditures on such items could not be justified by the federal government in the face of the needs of other Indian communities for basic services, such as improved housing and water systems.

The major point of contention between the Government and the communicant was a general and unspecified claim by the Band for compensation. In an attempt to permit resolution of the matters agreed upon between the parties, the Government of Canada put forward a proposal that would have enabled the Band to accept Canada's offer in its entirety and still pursue the claim for general compensation in Canadian courts. The Band refused this proposal, thus depriving, at least in the immediate future, its

- 3 -

members of a permanent land base with attendant mineral rights, new housing with all related services, a new school, self-government, and wildlife management participation over a large area. Prudent management of the items contained in the offer could easily have resulted in a high level of meaningful future employment for members of the Band. In sum, the Band was offered the means to maintain its culture, control its way of life and achieve economic self-sufficiency. These means could only be offered to the Band, they could not be imposed.

Finally, it should be noted that to have met the demands of the Band to the extent demonstrated by Canada's formal offer, is not consistent with the Band's allegations of negotiating in bad faith. Bad faith negotiations by either the Band or Canada would not have lasted six weeks, resulted in such a comprehensive offer, nor seen so many of the Band's demands agreed to.

The Government of Canada's offer remains open for acceptance by the Band. It represents in itself an effective remedy to the violations of the Covenant alleged by the Band. In addition, two court actions commenced by the Band are still outstanding. One action was commenced in the Federal Court of Canada against the federal government; the other in the Alberta Court of Queen's Bench against the province and certain private corporations. (See Canada's communication dated May 31, 1985 at pages 2-7 and

- 4 -

October 7, 1987 at pages 4-9). Pursuant to article 5(2)(b) of the Optional Protocol, Canada has a right to require that effective domestic remedies be exhausted prior to a communication being addressed by the Committee.

III. PROCESS

The Human Rights Committee, in its decision dated August 6, 1987, declared the communication of the Lubicon Lake Band admissible, not on the basis of Article 1 (as alleged by the Band), but insofar as the communication may raise issues under article 27 or other articles of the Covenant. In its submission of October 7, 1987, the Government of Canada requested the Committee to review its decision on admissibility pursuant to Rule 93(4) of the Provisional Rules. Additionally, the Government of Canada requested that if the Committee maintained its decision on admissibility, the Committee identify the specific article(s), allegations and evidence on which its decision was based. It is, of course, impossible to respond to the substance of the Band's claim without this information being specified. The Government of Canada is still awaiting the Committee's response on these issues, so that if necessary, a response on the merits of the claim can be prepared.

- 5 -

IV. CONCLUSIONS

The Government of Canada submits that the offer outlined above, as well as the ability of the Band to pursue the unresolved issue of general compensation in the courts, amounts to an effective domestic remedy. Additionally, the Band has not pursued to completion the two court actions which it has already commenced. Consequently, it is submitted that effective domestic remedies have not been exhausted as required by article 5(2)(b) of the Optional Protocol, and thus, the communication should be declared inadmissible by the Committee. If, on the other hand, the Committee maintains that the communication is admissible, the Government of Canada is awaiting the Committee's identification of the article(s) and evidence on which the admissibility decision is based so that a response on the merits may be prepared.

PRINCIPAL DEMANDS OF THE LUBICON LAKE BAND AND THE RESPONSE OF THE CANADIAN GOVERNMENT

<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Quantum of Land</u>	95 square miles	- to give effect to Band/Province agreement	- agreed to Band demand for 95 sq.mi.
<u>Mineral Rights</u>	Full on 95 sq.mi. - agreed to Provincial offer of mineral rights on 79 sq.mi.	- Canada proposed full mineral rights to 95 sq.mi. subject to agreement by Band and Province.	- full mineral rights to 79 sq.mi.
<u>Self-Government</u>	Band sought approval for its proposal for self-government.	Band and Canada agreed to a self-government framework agreement.	Not involved.
<u>Location of Reserve</u>	Location to be around Lubicon Lake, Alberta.	Canada agreed.	Agreed (final minor boundary adjustments still required).

- 2 -

<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Membership</u>	Band sought: a) control over its membership b) no major division between status of its members	a) agreed to by Canada in 1986 b) Canada agreed to "fast track" registration in accordance with Canadian law. It is likely that more than 98% of Band members are registerable as Indians, hence division problem non-existent. - Band/Province agreement reduced importance of membership in calculation of land quantum.	Not involved.
<u>Hunting and Trapping</u>	Control over hunting and trapping.	Not involved	Agreement in principle reached.
<u>Construction of a Community</u>	Construction of a new community.	Canada agreed to fund a single family house for each family with attendant infrastructure (sewer, water, electricity, gas, roads), a school, and principal Band building (office, health centre, community hall, hall, firehall and truck), plus planning and management.	Not involved.

- 3 -

<u>ISSUE</u>	<u>DEMAND BY BAND</u>	<u>OFFER BY GOVERNMENT OF CANADA</u>	<u>OFFER BY GOVERNMENT OF THE PROVINCE OF ALBERTA</u>
<u>Trappers' Assistance</u>	Band sought mechanism to assist trappers maintain way of life.	Canada offered \$500,000 trust fund to augment incomes.	Position unknown to Canada. Negotiations ongoing.
<u>Economic Self-sufficiency</u>	Band sought means to economic self-sufficiency.	Canada offered package valued at \$10.2 million which, if prudently managed, would see very high level of meaningful employment.	Additional support possible but not explored while Canada party to discussions.
<u>Band Costs in Presenting Claim</u>	Not specified in detail.	Canada has provided \$1,814,000 to assist Band to date.	Position unknown to Canada. Negotiations ongoing.
<u>Compensation</u>	Band position has varied but thought to be \$114-275,000,000 from Canada. Amount sought from Province is unknown to Canada.	Canada did not agree to this claim. Canada gave Band option of accepting all of its offer and pursuing compensation in court. This was rejected.	Position of Province not explored while Canada was present.

**OUTLINE OF ISSUES IN THE LUBICON LAKE BAND CASE AND
THE GOVERNMENT OFFER**

ISSUES

Impairment of way of life
and economic development

Impairment of way of life
and cultural, social and
political development

GOVERNMENT OFFER

- Reserve lands with full mineral rights over most of these lands
- Agreement-in-principle on hunting and trapping management
- Trust fund for trappers' assistance with other on-going negotiations
- Employment package valued at \$10.2 million
- Option of pursuing compensation through courts

- See items above on hunting and trapping
- Construction of a community with single-family housing for each family, infrastructure of sewers, water, electricity, gas, roads, school, and band building with office, health centre, community hall and firehall
- Control over membership provided
- Agreement on a self-government framework with negotiations to follow, similar to process leading to legislative arrangements for self-government with other communities



External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

Align first character of Security Classification under this arrow
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Accession/Référence
File/Dossier
45-Cda-1313-Lubicon Lake Band.
29 MAY 89 22 26 Z 12 10

SECURITY
SÉCURITÉ

C O N F I D E N T I A L

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TO/À

TO GENEV

INFO

DISTR

INFO JUSTOTT/LOW/WEISER/FREEMAN BIA FPROOTT/OACA/CARO

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INAHULL/LAFRENIERE/WHITAKER/HUDSON BH

SUBJ/SUJ

DISTR MINA JFB JCD IFB IMD IMH

REF YOURTELS YTGR 3548 25MAY,3083 12MAY OURTEL JLO 0976 19MAY

---ICCPR OPTIONAL PROTOCOL COMPLAINT:LUBICON LAKE BAND

RE PARA 2/2 YOUR REFTEL OF 25MAY,GRATEFUL YOU ADVISE SECRETARIAT
OF CDN INTENTION TO TRANSMIT FURTHER SUBMISSION,NOTWITHSTANDING
HUMAN RIGHTS CTTEE'S MARCH DECISION.YOU SHD ADD IN NOTE THAT CDA
BELIEVES THAT NEW CDN SUBMISSION MAY HAVE IMPACT ON CTTEES DECISION
AND THEREFORE WE ARE ASKING THAT CTTEE HAVE OPPORTUNITY TO REVIEW
NEW SUBMISSION BEFORE MAKING DECISION.HOWEVER YOU SHOULD NOT ALLUDE
TO OUR INTENTION TO ADDRESS SUBSTANTIVE QUESTIONS(REF PARA 12/12
OF REFTEL OF 12MAY),AS DEGREE TO WHICH WE SHALL ADDRESS MERITS HAS
NOT YET BEEN DETERMINED.

2.YOUR COMMENTS ON COMMUNICATIONS STRATEGY AND LOBBYING MUCH
APPRECIATED.WE SHALL KEEP YOU APPRISED OF FURTHER DEVELOPMENTS IN
THIS REGARD.

DR/ETER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

JOHN T. HOLMES/tb
SIG

JLO

996-5407

SIG

ROBERT J. ROCHON

003054

Department of External Affairs



Ministère des Affaires extérieures

RETURN TO REVENIR AU			BOULEVARD POUR - ETRE PORTER AU DOSSIER		
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45-CA-13-1-3- u.c.7					

Ottawa, Ontario
K1A 0G2

May 26, 1989

IMH-0857

Lubicon Lake Band

Dr. Peter Schwarzbauer
Weissgasse 9-13/2/1
A-1170 Vienna
Austria

Dear Dr. Schwarzbauer:

I am writing in regards to your letter of April 27, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

In your letter you asked that communications made to the United Nations Human Rights Committee by the Canadian Government concerning the Lubicon Lake Indian Band be made public. In fact, the policy of the Canadian Government is to maintain the confidentiality of such communications. In doing so, Canada respects and complies with the request of the United Nations that all communications with the Human Rights Committee should remain confidential.

However, I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

I trust that the above allays your concerns about this matter.

Yours sincerely,

J. Daniel Livermore
Director
Human Rights and
Social Affairs Division

GESELLSCHAFT FÜR BEDROHTE VÖLKER - ÖSTERREICH

Menschenrechtsorganisation für ethnische, rassische und religiöse Gruppen und Minderheiten

To the
Minister of External Affairs
the Honorable Joe Clarke
Department of External Affairs
Ottawa
Ontario
Canada

FOR FILING	
POUR - ETRE	
RENOYER AU	PORTER AU DOSSIER
ACC	REF: DATE
FILE	DOSSIER

Re: Lubicon Lake Indian Nation - United Nation Complaint

Dear Sir!

We are advised that Canada recently made a submission to the UN Human Rights Committee on the Lubicon Lake situation.

We demand that you make public the contents of all Canadian submissions in that matter so that the public has a chance to evaluate them.

Thank you!

ASSOCIATION FOR ENDANGERED PEOPLES - AUSTRIA
ASOCIACIÓN POR LOS PUEBLOS AMENAZADOS - AUSTRIA
DRUŽBA ZA OGROŽENE NARODE - AVSTRIJA
DRUŠTVO ZA UGROŽENE NARODE - AUSTRIJE

A-03125-89 1md

info: MINA/MASON

Kleebattgasse 4

A-1010 Wien, Austria

☎ (0-22-2) 661615

☎ (0-22-2) 5331615

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see below

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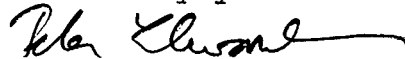
Vereins-Konto: PSK 7238.909

Kampagnen-Konto: PSK 7239.001

Schwarzspanierstr. 13/rechte
Stiege/1. Stock, A-1090 Vienna
Austria/Europe

Vienna, April 27 1989

Sincerely yours



for the board:

Dr. Peter Schwarzbauer

Weissgasse 9-13/2/1

A-1170 Vienna

Austria/Europe

c Lubicon Lake Indian Nation

Präsident: Prof. Robert Jungk

Ehrenmitglieder: Dr. John Bunzl, Univ.-Doz. Dr. Gerhard Drekonja, Milton Fineran (OGLALA LAKOTA COLLEGE), Georg Gaupp-Berghausen (t), Mario Gonzalez, USA, Dr. Georg Grünberg, Dr. Alfred Janata, Javier Armato (Yukpa-Venezuela), Birgil Kills-Straight (Lakota Treaty Council), Pater Dr. Manfred Kniewasser (CARITAS), Ailton Krenak (UNI-Brasilien), Univ.-Prof. Dr. Anton Pelinka, Ingrid Reusch (AMNESTY INTERNATIONAL), Univ.-Prof. DDr. Charlotte Teuber, Peter Turrini, Univ.-Prof. Dr. Erika Weinzierl.

OFFICE OF THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS
CABINET DU SECRETAIRE D'ETAT AUX AFFAIRES EXTERIEURES

ACTION REQUEST/FICHE DE SERVICE

From/De : DR PETER SCHWARZBAUER
ASSOCIATION FOR ENDANGERED PEOPLES

No.: A-03125-89

Subject/Sujet : UNHRC:CDN LUBICON LAKE SUBMISSION
Classification: UN, CWLTH, FRANCOPHONE * NU, CWLTH, FRANCOPHONE

Action div./Dir. resp.: ~~IMO~~ *IMH*
Info : MINA/MASON

Let./Tel. dated	Date sent to division	Deadline date
Let./Tel. en date du	Date d'envoi à la direction	Echeance
*****	*****	*****
27 APR 89	11 MAY 89	**26 MAY 89**

Comments/Commentaires

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Reponse pour la signature de | Action officer/Agent resp.
<i>AF/ST</i> |
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| <input type="checkbox"/> CAMPAIGN: Reply for signature of SSEA
CAMPAGNE: Reponse pour la signature du SEAE | |
| <input type="checkbox"/> CAMPAIGN: Reply by division
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Blanche Retourner aux archives de MINA lorsque suite a ete donnee	
Yellow - Divisional secretary	Green - File with original incoming letter
Jaune Secetaire de direction	Verte Au dossier avec la lettre recue

C O N F I D E N T I A L

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TO EXTOTT JLO DELIVER BY 251400

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LAFRENIERE/WHITAKER/HUDSON DE OTT

DISTR MINA JFB JCD IFB IMD IMH

REF YOURTEL JLO0976 19MAY

---ICCPR OPTIONAL PROTOCOL COMPLAINT:LUBICON LAKE BANK

TAKING POINTS CONTAINED IN YOUR REFTTEL ONE BY ONE:

2.FIRST RE FURTHER CDN SUBMISSION:SHALL WE ADVISE CENTRE IN WRITING
OF PLANS TO SUBMIT FURTHER VIEWS?

3.SECOND,RE COMMUNICATIONS PLAN-WE AGREE ON NEED FOR CONTINGENCY PLANS
IN THIS RESPECT.WE WOULD NOT/NOT NECESSARILY BE AVERSE TO A RESPONSE
THAT CONTAINED IMPLICIT,JUSTIFIABLE CRITICISM OF CTTEES HANDLING OF
THIS MATTER(IF INDEED THERE ARE ELEMENTS OF CTTEES FINAL DISCUSSION
THAT WARRANT CRITICISM).NORWEGIAN AND DUTCH COLLEAGUES HAVE RECENTLY
VOICED PRIVATE DISSATISFACTION WITH EXTENT TO WHICH CERTAIN RECENT
OPTIONAL PROTOCOL DECISIONS HAVE SEEMED TO REFLECT ASSUMPTION BY CTTEE
OF UNDISCRIMINATING HUMAN RIGHTS ADVOCACY ROLE,RATHER THAN OBJECTIVE
ASSESSMENT OF FACTUAL SITUATION AGAINST ICCPR STANDARDS.WHILE
MAINTAINING VIGOROUS SUPPORT FOR IDEA OF OBJECTIVE,INDEPENDENT
TRIBUNAL TO ADDRESS INDIVIDUAL COMPLAINTS,BELIEVE THAT MEANS MUST ALSO
BE FOUND TO ENCOURAGE CTTEE BETTER TO LIVE UP TO THIS IDEA.A MEASURED
APPRAISAL OF INCONSISTENCIES IN CTTEES HANDLING OF THISE CASE-PFRHAPS
...2

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FILE	45 Cda-13-1-3- Lubicon
Lake Band	

PAGE TWO YTGR3548 CONF

IN FORM OF A FURTHER POST-DECISION SUBMISSION TO CTTEE-MIGHT HAVE A SALUTARY EFFECT TO THIS END.

4.WE REALIZE OF COURSE THAT,FOR PUBLIC CONSUMPTION PURPOSES,ONLY EFFECTIVE RESPONSE WILL BE ONE THAT FOCUSSES ON SPECIFIC MERITS OF OUR APPROACH TO LUBICON DISPUTE,AND CANNOT BE PORTRAYED AS ATTACK ON THE CTTEE OR WEAKENING OF OUR COMMITMENT TO UN HUMAN RIGHTS MACHINERY.FOR THIS REASON,TWO-PRONGED APPROACH-INVOLVING IMMEDIATE PUBLIC LINE IN TERMS YOU HAVE SUGGESTED AND SUBSEQUENT QUOTE LAST WORD UNQUOTE SUBMISSION TO CTTEE-MIGHT BE CONSIDERED.

5.FINALLY,RE POSSIBILITY OF ANY LOBBYING OF CTTEE MEMBERS BEFORE OR DURING JULY SESSION,OUR INITIAL REACTION-THAT ANY SUCH ACTIVITY MUST BE APPROACHED VERY CAUTIOUSLY-HAS BEEN REINFORCED BY SUBSEQUENT DISCUSSIONS WITH JAKOB MOLLER OF CENTRE.CONCERNS YOU HAVE CITED RE QUESTIONABLE PERFORMANCE OF CTTEE ON THIS ISSUE AND PROSPECTIVE DOMESTIC AND INTERNATIONAL COSTS OF AN ADVERSE FINAL DECISION ARE FULLY APPRECIATED.HOWEVER,POSSIBILITY THAT DISCREET LOBBYING MIGHT TURN THINGS AROUND WOULD APPEAR TO BE OUTWEIGHED BY DANGER THAT SUCH ACTIVITIES MIGHT INSTEAD ENHANCE PROBABILITY OF AN ADVERSE DECISION AS WELL AS PUBLIC AFFAIRS COSTS OF ENTIRE AFFAIR.

6.YOU WILL RECALL THAT WE HAVE ON PREVIOUS OCCASIONS OFFERED TO QUOTE MAKE AVAILABLE TO CTTEE MEMBERS UNQUOTE A CDN OFFICIAL QUALIFIED TO EXPLORE INTRACACIES OF THIS CASE.WHEN SECT PUT THIS IDEA TO CTTEE, IT WAS REJECTED ON GROUNDS THAT CTTEE PROCEDURES PROVIDE ONLY FOR ...3

PAGE THREE YTGR3548 CONFD

WRITTEN QUOTE PLEADINGS UNQUOTE IN OPTIONAL PROTOCOL MATTERS. MOLLER ADVISES THAT QUOTE LURKING OF GOVT REPS IN CORRIDOR UNQUOTE DURING PRIVATE CTTEE SITTINGS IS QUOTE SIMPLY NOT/NOT DONE UNQUOTE AND, WHAT IS MORE, WOULD NEVER/NEVER BE EXPECTED OF CDA. HE RELATED INCIDENT AT LAST CTTEE SITTING IN NEW YORK WHEN CDN MIQ MAQ REPS MADE NUISANCE OF SELVES BY APPROACHING SEVERAL CTTEE MEMBERS DURING PUBLIC SITTINGS OF CTTEE AND WERE ULTIMATELY ASKED BY CHAIRMAN TO LEAVE ROOM. IN SUM, MOLLER CONSIDERED THAT ANY DIRECT EFFORTS TO QUOTE TALK TO THE JUDGES UNQUOTE WOULD BE RESENTED BY CTTEE MEMBERS AND HAVE COUNTER-PRODUCTIVE EFFECT. ACCIDENTAL ENCOUNTERS IN WHICH SUBJ IS RAISED BY CTTEE MEMBERS MAY BE REGARDED AS ACCEPTABLE, BUT WE OBVIOUSLY CAN NOT/NOT BUILD A STRATEGY AROUND SUCH CONTACTS.

7. IN THESE CIRCUMSTANCES, WE WOULD RECOMMEND CONCENTRATION ON PREPARATION OF A SOLID SUBMISSION THAT IS SUFFICIENTLY CONCISE AND LUCID, AND SUBMITTED SUFFICIENTLY EARLY, THAT OTHER MEMBERS CAN NOT/NOT FAIL TO READ IT THROUGH AND GIVE IT SERIOUS CONSIDERATION. THIS MAY BE A LONG SHOT, BUT IT ALSO SEEMS TO BE OUR ONLY SHOT IN PRESENT CIRCUMSTANCES. IT IS NOT/NOT INCONCEIVABLE-THOUGH NOT/NOT PERHAPS HIGHLY PROBABLE-THAT AN EFFECTIVE SUBMISSION COULD AT LEAST INDUCE CTTEE TO DELAY FINAL DETERMINATION, THUS PROVIDING MORE BREATHING SPACE TO STRENGTHEN OUR POSITION IN THIS MATTER.

CCC/025 251522Z YTGR3548

External Affairs
CanadaAffaires extérieures
CanadaREFERRED BY THE OFFICE
OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNITTRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE992-6428 or 995-1047
ouTO/À
AU*JED**JLO*☒ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU☐ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

R. E. D'Aoust

Signature

27-6-89

Date

Office of the
Prime Minister



Cabinet du
Premier ministre

We have not responded nor do we
intend to.

This copy is for your information
and whatever action you deem
appropriate.

Susan Fletcher
957-5606

with the
compliments of hommage de

Office of the
Prime Minister



Cabinet du
Premier ministre

Correspondence
Unit

Section de la
Correspondance

003063


091560181

BIG MOUNTAIN Aktionsgruppe

c/o Monika Seiller
Franziskanerstr. 36
8000 München 80
Federal Republic of Germany
Tel.: 089/4489358

Spendenkonto: Monika Seiller, Stadtparkasse München, BLZ 701 500 00, Kontonr. 17-216920

To Brian Mulroney
Prime Minister of Canada
Ottawa, ON K1A 0H4
Canada

	
DATE	REF: DATE
D 331ER	
45-CDA-13-1-3-	
Lubicon Lake	
Band	

May 22nd 1989

Dear Sir,

our organization has received information about the recent efforts of your government to split the Lubicon Nation. We consider this to be an infamous tactic to irritate the public about the true conflict. According to our information the feedback of your methods is not quite what you have expected. How come that nobody wanted to be responsible for a petition in favour of your governments last insulting offer? How come that people admitted they haven't read the petition? Do you think these colonial methods, to let somebody sign a paper he or she did not read is fair business?

For years your government blocked any progress by refusing to accept the band's numbers regarding membership. Now that this issue seems to be settled or close to a settlement you twist once again to misuse these people for your own goals. Do you think the Lubicons are a banana republic, Panama style?

Some natives seem to be bribed, frauded or intimidated by your actions, others not from the disputed area, not members of the Lubicon Band try to surf on your latest propaganda wave. To speak frankly we do not think that your corrupt government is a credible advocate for native Canadians since your own citizens created a label for your smear campaign: "The Mulroney 3D smear campaign", it's dimensions are delay, deceit and destruction.

To some extent your government is a criminal organization, that is what we come to think of you and your friends Colby, McKnight, and Cadieux. You and your friends are no better than your South African counterparts.

Every time we receive a letter from your German propaganda office we read a "thank you for sharing your views". A real smooth way to avoid real discussion, we never received any substantial words from your side but propaganda.

We demand that you and your government meet your own constitutional responsibilities.

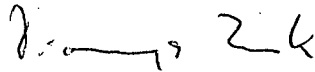
We demand a fair solution to the compensation question, because Canada is owing the Lubicons not only money but a chance for future generations.

We demand that your government stops all under cover attempts to interfere with the Lubicons process of decision-making.

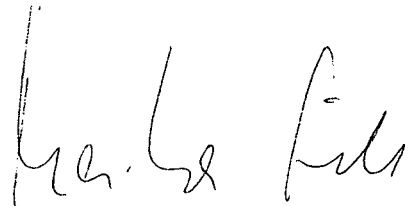
We demand that the Canadian government accepts a democratic vote.

This time we want more than pretty lies.

Yours sincerely



Dionys Zink
Rep. BMAG Lubicon Dept



Monika Seiller
Rep. BMAG

cc

Lubicon Band
The Hon. E. Broadbent
The Hon. J. Turner
Jim Fulton, MP
Ms E. Blondin
George Erasmus, AFN



External Affairs
Canada

Affaires extérieures
Canada

IMH/J. Trottier/992-6664

TO/A

IMD

FROM/DE

IMH

REFERENCE •
RÉFÉRENCE

SUBJECT • Current Status of Dispute with Lubicon Lake
SUJET Indian Band

Security/Sécurité
UNCLASSIFIED
Accession/Référence
File/Dossier
45-CA-13-1-3-Lubicon Lake Band
Date
May 19, 1989
Number/Numéro
IMH-0798

ENCLOSURES

ANNEXES
-1-

DISTRIBUTION

Further to your request for an update concerning the status of the dispute between Canada and the Lubicon Lake Indian Band, we are providing the following information.

2. Attached please find the latest communication from Canada to the Human Rights Committee on this subject. You will find it to be a succinct summary of developments.

3. To sum up, in our view, the fundamental issue in the dispute has concerned the setting aside of land for a reserve. The Lubicon have claimed that the denial of land for a reserve (and the economic and social consequences thereof) have violated a number of rights under the International Covenant on Civil and Political Rights. They have chosen a somewhat scatter-gunned approach claiming violations of a range of rights including the right to life and privacy and religious, equality and minority rights.

4. The position of Canada is that the Lubicon claim pursuant to the Optional Protocol of the Political Covenant is inadmissible in that domestic remedies have not been exhausted. Nevertheless Canada accepts that the Lubicon have a legitimate claim to land and has committed itself to seeking a fair and just resolution. Until 1988, there was continued disagreement concerning the quantum of land and an inability of the Band and the provincial government (which owns the land in question) to come to an agreement. In 1988, there was a tentative agreement concerning land issues. The Province of Alberta and the Lubicon Lake Band agreed that 95 square miles of land would be set aside for a reserve.

5. Following the tentative agreement concerning land, the federal government and the band started negotiations, in November 1988, on the formal transfer of this land and related issues. During the following eight weeks, negotiations were held and consensus was reached on the majority of issues, including membership, reserve size, community construction and delivery of programs and services. The offer of the federal government amounted to approximately

- 2 -

45 million dollars in benefits and programs, in addition to the reserve.

6. However agreement could not be reached on the issue of cash compensation. In negotiations, the band claimed compensation of between 114 and 275 million dollars for alleged lost resource revenues. Canada does not agree that such an entitlement exists. However, the government has advised the band that Canada is prepared to proceed with all aspects of its offer without prejudice to the Band's right to sue the government for compensation.

7. On January 24, 1989, the Band withdrew from negotiations. The offer of the government remains valid.



Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division

February 2, 1989

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

The Government of Canada wishes to advise the Secretary-General of the United Nations of recent developments in regard to the communication of Chief Bernard Ominayak and the Lubicon Lake Band (G/SO 215/51 CANA (38) 167/1984).

In November 1988, following an agreement between the province of Alberta and the Lubicon Lake Band to set aside 95 square miles (247 square kilometres) of land for a reserve¹, the federal government commenced negotiations with the Band on the formal transfer of this land and related issues. During the following eight weeks, negotiations were held and consensus was reached on the majority of issues, including membership, reserve size, community construction and delivery of programs and services. However, agreement could not be reached on the issue of cash

¹ Under the Constitution Act, 1930, the Government of Canada transferred all public lands which had previously been administered by the federal government to the province of Alberta, with the proviso that upon the request of the federal government, Alberta would set aside out of unoccupied Crown lands, areas necessary for the federal government to fulfill its obligations under treaties with the Indians of Alberta (see Canada's submission dated Oct. 7/87, pp. 16-17)

- 2 -

compensation and on January 24, 1989, the Band withdrew from negotiations when the federal government presented its offer.

The formal offer of the Government of Canada is attached as Appendix 1. Listed below are some of the key terms of the offer which were agreed upon by both the federal government and the communicant:

1. Transfer to the Band of a 95 square mile (247 square kilometres) reserve, of which 79 square miles (205 square kilometres) would contain mineral rights, including oil and gas.
2. The Government of Canada accepted the communicant's calculations with respect to who is a member of the Band (i.e., 514 members). This figure is important for the purpose of determining entitlement to certain government benefits. However, members, in order to receive certain of these benefits, must also be registered as Status Indians. A number of members of the Lubicon Lake Band were not so registered, and thus, an expedited procedure was developed to accomplish early registration.
3. Thirty four million dollars to aid the Band in developing a new community, including the installation of a sewer and water

- 3 -

firehall, a school from grades kindergarten to twelve, and a new medical center, and subsidies towards the building of homes for each family.

4. Two and a half million dollars a year in federal support programs, including social assistance (i.e. health and income support programs), to be administered in a way that would provide flexibility for the Band to meet community needs.
5. A Special Development Plan to assist the Band in establishing a viable modern economy on its new reserve. The plan would include one million dollars for planning and staff additions, five million dollars as "start up" capital, four million dollars for specific Band businesses and four hundred thousand dollars to establish a training trust.
6. A five hundred thousand dollar trust fund to assist Band elders wishing to pursue the traditional way of life of hunting and trapping.

The federal government's offer amounts to approximately 45 million dollars in benefits and programs, in addition to a 95 square mile (247 square kilometres) reserve. In negotiations, the Band claimed an additional compensation of between 114 and 275 million dollars for alleged lost resource revenues. The Government of Canada does not agree that such an entitlement

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exists. However, it advised the Band, in a statement from the federal government negotiator (Appendix 2), as well as in a press release and statement from the Minister of Indian and Northern Affairs (Appendix 3), that it is prepared to proceed with all aspects of its offer without prejudice to the Band's right to sue the Government of Canada for compensation.

Underlying the federal government's negotiations with the Band was the need to meet two tests of fairness: the first was that a settlement had to be consistent with other recent settlements with native groups; the second was that a settlement had to address the legitimate social and economic objectives of the Band. The Government of Canada believes its offer meets both these criteria.

It should also be noted that discussions were held with the Lubicon Lake Band concerning topics which would be negotiated in the community negotiations process. These discussions resulted in a preliminary agreement on a framework for these negotiations, however, the agreement has not been ratified by either Canada or the Band.

The community negotiations process is seen as a practical vehicle and opportunity for Indian communities to increase their local autonomy and decision-making responsibilities. The federal policy provides for negotiations on a range of issues, such as

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Based on the information above and in previous submissions, the Government of Canada submits that effective domestic remedies have not been exhausted. Accordingly, Chief Ominayak's communication under the Optional Protocol should be declared inadmissible by the Committee. However, if the Committee should reach a contrary conclusion, the Government of Canada reserves the right to make submissions on these matters at a later date.



External Affairs
Canada

Affaires extérieures
Canada

IMH/J. Trottier/992-6664

TO/À • IMD

FROM/DE • IMH

REFERENCE •
RÉFÉRENCE

SUBJECT • Current Status of Dispute with Lubicon Lake
SUJET Indian Band

Security/Sécurité	UNCLASSIFIED
Accession/Référence	
File/Dossier	45-CDA-13-13-LUBICON LAKE BAND
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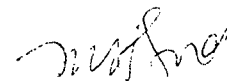
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External Affairs
Canada

Affaires extérieures
Canada

MESSAGE

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

Accession/Référence	605516
File/Dossier	45-13-1-3-Lubicon Lake Band

SECURITY
SÉCURITÉ

C O N F I D E N T I A L

FM/DE

FM EXTOTT JLO-0976 19MAY89

TO/À

TO GENEV ((deliver by 220900))

INFO

DISTR

INFO JUSTOTT/LOW/WEISER/FREEMAN FPROOTT/OACA/CARON

REF

INAHULL/LAFRENIERE/WHITAKER/HUDSON

SUBJ/SUJ

DISTR MINA/JFB/JCD/IFB/IMD/IMH

REF YOURTEL YTGR 3083 12 MAY

---ICCPR OPTIONAL PROTOCOL COMPLAINT:LUBICON LAKE BAND

INTERDEPARTMENTAL CTTEE MET 16JAN TO DISCUSS SUBJ COMPLAINT IN
LIGHT OF INFO AND SUGGESTIONS YOU PROVIDED IN REFTEL.DISCUSSION
WAS FOCUSED ON THREE MAIN AREAS:NATURE OF ANY FURTHER CDN
SUBMISSIONS,

COMMUNICATIONS STRATEGY IN EVENT OF NEGATIVE DECISION,AND
POSSIBLE LOBBYING EFFORTS.

2.CDN SUBMISSION:CTTEE AGREED ON UTILITY OF FURTHER CDN
SUBMISSION,MAIN ELEMENTS OF WHICH ARE SIMILAR TO THOSE SUGGESTED
BY YOU IN REFTEL PARA 10,POINTS A AND B,I.E.SUBMISSION WILL
ACKNOWLEDGE HUMAN RIGHTS CTTEES(HRC)MARCH DECISION AND ITS WISH
TO END LONGSTANDING DISPUTE AND THEN RECAPITULATE CDN
UNDERSTANDING OF WHERE CASE STANDS PROCEDURALLY AT THIS
POINT.SUBMISSION WILL ALSO BRIEFLY SUMMARIZE HISTORY OF

NEGOTIATIONS TO DATE WITH LUBICON BAND,INCLDG SUCCINCT COMPARISON

BETWEEN LUBICONS ORIGINAL DEMANDS(LAND,BAND MEMBERSHIPS,ECON

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

JOHN T. HOLMES

JLO

996-5407

ROBERT J. ROCHON

SIG

SIG

003080

PAGE TWO JLO-0976 CONF D

DEVELOPMENT ASSISTANCE, OIL AND MINERAL RIGHTS) AND WHAT GOVT HAS OFFERED.

3. WITH REGARD TO POINT C OF PARA 10, CTTEE HAS NOT YET MADE DECISION WHETHER TO INCLUDE SUBSTANTIVE ARGUMENTS IN SUBMISSIONS. CONCERN WAS EXPRESSED BY SOME PARTICIPANTS THAT ANY CDN ARGUMENTS PROFFERED ON ~~THE~~ ^{AGAINST US} MERITS OF LUBICON CLAIM WOULD IN FACT BE USED BY HRC AS BASIS FOR ITS DECISION. AS WELL, BECAUSE WE HAVE BEEN GIVEN LITTLE DIRECTION AS TO WHAT HRC DECISION WILL BE BASED ON, CONCISE CDN VIEW OF MANY DISPARATE ELEMENTS OF POSSIBLE ICCPR VIOLATIONS WOULD BE EXTREMELY DIFFICULT TO PREPARE. NOTWITHSTANDING THOSE CONCERNS, IT MAY BE POSSIBLE TO FASHION SOME SUBSTANTIVE ARGUMENTS BY POINTING TO CERTAIN PROVISIONS OF ICCPR (SUCH AS ART 27) AND STATING THAT ALLEGED VIOLATIONS ARE IN FACT BEING ADDRESSED AS PART OF NEGOTIATIONS. THIS WOULD HAVE ADVANTAGE OF MAINTAINING FOCUS ON ADMISSIBILITY QUESTION, ~~AND NOT/NOT, AT SAME TIME, HAVE CDA QUOTE~~ ~~WRITE HRC'S DECISION UNQUOTE~~. IN ANY EVENT, WE WILL FORWARD TO YOU COPY OF FIRST DRAFT OF PROPOSED SUBMISSION WHICH IS EXPECTED TO BE PREPARED BY 01JUN89.

4. COMMUNICATIONS PLAN: IT WAS AGREED THAT, BECAUSE OF LIKELIHOOD OF NEGATIVE HRC DECISION IN JULY, COMM PLAN FOR MINS WOULD BE

PAGE THREE JLO-0976 CONF D

REQD. PRELIMINARY VIEW WAS THAT MESSAGE SHLD HIGHLIGHT CDN WILLINGNESS TO PARTICIPATE IN HRC COMPLAINT PROCEDURES, AS DEMONSTRATED BY LUBICON CASE; DISAPPOINTMENT THAT CTTEE MADE FINAL DECISION WHILE NEGOTIATIONS WERE STILL UNDERWAY (AND PRIOR TO EXHAUSTION OF THAT AND OTHER DOMESTIC REMEDIES); DISAPPOINTMENT THAT CDA NOT GIVEN MUCH OPPORTUNITY TO REPLY TO SUBSTANCE OF COMPLAINT NOR INDICATION OF WHAT ARTICLES OF ICCPR WERE BEING CONSIDERED BY HRC FOR VIOLATIONS; AND FACT THAT HRC APPROACH IN ESSENCE POINTS TO NEED FOR NEGOTIATIONS, WHICH CDN GOVT IS PREPARED TO RESUME AT ANY TIME. FURTHER INTERDEPTL MTG WILL BE HELD IN JUNE TO DEVELOP COMM PLAN. YOUR VIEWS APPRECIATED IN DUE COURSE.

5. LOBBYING: SOME PARTICIPANTS OF INTERDEPTL CTTEE FELT THAT SOME FORM OF LOBBYING OR SENSITIZATION EFFORT SHLD BE UNDERTAKEN IN ORDER TO CONVINCE HRC MEMBERS THAT SUBSTANTIVE DECISION IN JULY WLD BE UNFAIR TO CDA AND INCONSISTENT WITH HRCS OWN MANDATE AND RULES OF PROCEDURES. AS WELL, NEGATIVE DECISION WAS VIEWED AS POTENTIALLY SERIOUS PUBLIC AFFAIRS PROBLEM, TO BE AVERTED IF AT ALL POSSIBLE. OTHER PARTICIPANTS FELT THAT LOBBYING (IF IT BECAME PUBLIC) WOULD BE PERCEIVED AS INTERFERENCE IN QUOTE QUASI-JUDICIAL PROCESS UNQUOTE, AS WELL AS USE OF UNDUE INFLUENCE BY STATE AGAINST RELATIVELY HELPLESS VICTIMS (LUBICON). MOREOVER, SOME FELT

PAGE FOUR JLO-0976 CONF D

THAT RISK OF DISCLOSURE THAT LOBBYING WAS TAKING PLACE OUTWEIGHED
ODDS THAT LOBBYING WLD SUCCEED. IN LIGHT OF ABOVE, NO DECISION WAS
MADE ON LOBBYING FOR TIME BEING. GRATEFUL, THEREFORE, IF YOU WOULD
PROVIDE US WITH YOUR VIEWS ON THIS QUESTION. IN PARTICULAR, WE
WOULD APPRECIATE YOUR ASSESSMENT ON VALUE OF HAVING CDN REP
PRESENT AT BEGINNING OF JULY HRC SESSION IN ORDER TO CONTACT HRC
MEMBERS AND OUTLINE CDN CONCERNS. IF IN YOUR VIEW, SOME FORM OF
CONTACT WLD BE FEASIBLE AND APPROPRIATE, GRATEFUL YOUR BRIEF
ASSESSMENT ON WHICH HRC MEMBERS WLD BE MOST AMENABLE TO CDN
APPROACH.



IMH/J. Trottier/992-6664

TO/À . IMD

FROM/DE . IMH

REFERENCE •
RÉFÉRENCE

SUBJECT • Possible Decision of the U.N. Human Rights
SUJET Committee Regarding Lubicon Lake Indian Band

Security/Sécurité PROTECTED
Accession/Référence 631093
File/Dossier 45-DA-13-13-Lubicon Lake Band
Date May 18, 1989
Number/Numéro IMH-0786

ENCLOSURES
ANNEXES
-2-

DISTRIBUTION

IFB
JLO

We wish to alert you to the possibility that Indian Affairs may contact you by letter or by telephone concerning a proposal by Indian Affairs to lobby members of the U.N. Human Rights Committee (HRC) and states regarding the dispute between Canada and the Lubicon Lake Indian Band. (JLO is briefing JCD on this matter as well.)

2. Our mission in Geneva has informed us that the HRC may make a decision on the substance of the Lubicon Lake Indian Band case at its July 1989 session despite the fact the HRC is supposed to be dealing only with admissibility issues at the present time. The inter-departmental committee concerned has met to develop a response to this information. (Justice is the lead department and JLO is the lead within External Affairs on this issue.) Attached please find a memo to file concerning the inter-departmental plan to deal with the issue. We believe that, though an adverse decision is likely, damage can be contained.

3. The one point of disagreement concerns the above-mentioned Indian Affairs proposal to lobby Human Rights Committee members and their states of nationality on this issue. JLO, IMH and our mission in Geneva strongly oppose such action and Justice tends to do so as well, though they remain somewhat ambivalent. FPRO shares our view.

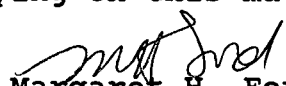
4. As you are aware, the HRC is made up of experts who sit in their personal capacity, not as representatives of states. Though some members are actually less independent than others, Canada has always endorsed and encouraged the principle of independence and treated the Committee as almost the equivalent of a judicial body. To turn around now and directly pressure Committee members and attempt to enlist other states to do the same (as Indian Affairs suggests) appears to us to be highly inappropriate and inconsistent with our traditional practice. It would set an unfortunate precedent for other states to take similar action in matters of concern to them.

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5. Moreover, it is our view that such activity will be ineffective (as in fact we have no leverage on Committee members) and probably counter-productive (in that it is bound to arouse the ire of various members and generate negative publicity in Canada). Attached for your information is a list of Committee members. (You should note that it is Western experts who are likely to be least amenable to influence either from ourselves or from their own states.)

6. Indian Affairs argues that since the Lubicon apparently have lobbied Committee members, we are free to do the same. It is our view that both Committee members and the public would perceive a significant difference between lobbying by the alleged victims and by the state concerned. The likely result of such activity on our part would be that whatever negative publicity is generated by an adverse decision will be compounded by unsuccessful lobbying. Indian Affairs are much less concerned about any negative publicity arising from Canadian lobbying efforts as they are about a negative decision on the Lubicon case. They believe that such a decision at this time would encourage other Canadian native groups to take their cases to the Human Rights Committee rather than negotiate in good faith with the government. Therefore, Indian Affairs believes that the Canadian government should do all it can now to avoid such a negative decision.

7. While we are sympathetic to the domestic implications of a negative Human Rights Committee decision we believe that whatever we want to say to Committee members can be communicated in writing in accordance with proper procedures without the risks involved in lobbying on this matter.


Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division

External Affairs Affaires extérieures
Canada Canada

IMH/J. Trottier/992-6664

TO/À • IMD
FROM/DE • IMH

REFERENCE •
RÉFÉRENCE

SUBJECT • Possible Decision of the U.N. Human Rights
SUJET Committee Regarding Lubicon Lake Indian Band

Security/Sécurité PROTECTED
Accession/Référence 637093
File/Dossier 45-CDA-13-1-3-LUBICON LAKE BAND
Date May 18, 1989
Number/Numéro IMH-0786

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Social Affairs Division

IMH/J.Trottier/992-6664

PROTECTED

May 16, 1989

TO FILE (Through Dan Livermore)

FROM IMH

---Meeting to Discuss Possible Lubicon Decision By HRC

There was a meeting at Justice on May 16, 1989 to discuss reaction to Genev tel regarding the likelihood of HRC making decision on substantive as opposed to admissibility issue at the next session in July 1989.

2. The consensus of the meeting was that there should be a CDN communication by June 15. That should express indignation at violation of due process. There should be a recapitulation of the points made previously. There could be a short history of the negotiations with perhaps a small chart illustrating what Lubicon had demanded in a number of areas and what Canada had offered. (DIAND/Coulter will supply a chart.) We should refer to the domestic remedies available including negotiations. Regarding the substantive issues, [REDACTED]

[REDACTED] Moreover, it might be counter-productive in that it could provide suggestions to the Lubicon (and the Cttee) regarding other grounds they might wish to consider. Some consideration should be given to addressing one or two of the most likely substantive issues. We might offer suggestions

3. Regarding the issue of a public communications strategy to pursue if a decision comes down against Canada, [REDACTED]

[REDACTED]

The favoured approach at the moment (depending on what basis the Cttee came to their decision) seemed to be to indicate that Canada was attempting to comply with the decision through a negotiations process. Then we could list some of the substantive steps taken. There will be another discussion (at an unspecified later date) together with departmental communications officers to discuss communications strategy.

4. DIAND/Coulter said that another communication would not be enough. He wanted vigorous lobbying of experts and states. He said if necessary he was ready to go to Minister of DIAND on matter. We told him that we had no leverage on Cttee members, that there was no evidence that lobbying would be effective and every indication that it would be counter-productive. We could

say whatever we had to say in writing without running the risks involved in oral communications. Moreover, such lobbying would be contrary to our past attitude of treating the Cttee as the equivalent of a judicial body. In addition, whatever the Lubicon may have done by way of lobbying of the Cttee, the perception would be that there was a great difference between lobbying by the alleged victims and and by the state concerned. FPRO/Caron and Justice/Freeman agreed with us; Justice/Low tended to our viewpoint as well [REDACTED]

[REDACTED] Even DIAND/Whitaker did not seem particularly keen on the lobbying notion.

s.23

James C. Trotter

MEMBERSHIP OF THE HUMAN RIGHTS COMMITTEE

<u>Name of Member</u>	<u>Country of Nationality</u>
Mr. Nisuke Ando**	Japan
Ms. Christine Chanet**	France
Mr. Joseph A. L. Cooray**	Sri Lanka
Mr. Vojin Dimitrijevic**	Yugoslavia
Mr. Omran El-Shafei**	Egypt
Ms. Rosalyn Higgins*	United Kingdom
Mr. Rajsoomer Lallah*	Mauritius
Mr. Andreas V. Mavrommatis*	Cyprus
Mr. Joseph A. Mommersteeg**	Netherlands
Mr. R.A. Myullerson*	U.S.S.R.
Mr. Birame Ndiaye**	Senegal
Mr. Fausto Pocar*	Italy
Mr. Julio Prado Vallejo**	Ecuador
Mr. Alejandro Serrano Caldera*	Nicaragua
Mr. S. Amos Wako*	Kenya
Mr. Bertil Wennergren**	Sweden
Mr. J. Fodor*	Hungary
Mr. F. J. Aguilar Urbina*	Costa Rica

* Term expires 31 December 1992.

** Term expires 31 December 1990.

Department of External Affairs



Ministère des Affaires extérieures

Canada

OTTAWA, Ontario
K1A 0G2

May 17, 1989

IMH-0779

Mrs. E. Jilek
121 Whitewood Pl. N.E.
Calgary, Alberta
T1Y 3S8

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

Dear Ms. Jilek: v

I am writing in regards to your letter of April 17, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

In your letter you asked that communications made to the United Nations Human Rights Committee by the Canadian Government concerning the Lubicon Lake Indian Band be made public. In fact, the policy of the Canadian Government is to maintain the confidentiality of such communications. In doing so, Canada respects and complies with the request of the United Nations that all communications with the Human Rights Committee should remain confidential.

However, I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

I trust that the above allays your concerns about this matter.

Yours sincerely,

Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division

Encl.



105/10

Communiqué

1-8903

CANADA, LUBICON BREAK OFF TALKS

(OTTAWA, JANUARY 24, 1989) -- Negotiations towards settlement of a land claim by the Lubicon Lake Indian Band have broken off, after the band rejected Canada's offer of \$45 million in addition to the 95 square mile reserve the band wanted.

The band is demanding additional compensation of between \$114 and \$275 million.

During 8 weeks of negotiations, consensus was reached among government and band negotiators on the key issues of membership, reserve size, community construction and delivery of programs and services. However, the negotiators were unable to reach agreement on the issue of cash compensation.

Canada's offer to the band included the establishment of a 95 square mile reserve and \$34 million to develop a new community.

Canada's offer also included a trust fund to preserve traditional band values and a \$10 million Special Development Plan to assist the band in its transition from a traditional hunting and trapping society.

11/16

- 2 -

The Hon. Bill McKnight, Minister of Indian Affairs and Northern Development said the band also rejected an offer to begin construction of the community immediately, without prejudice to the band's right to take the compensation issue to the Federal Court for decision.

Mr. McKnight estimated Canada's offer is equivalent to \$300 thousand in initial benefits and cash per family.

Mr. McKnight said "Canada has a responsibility to be fair on all sides. This offer is fair to the Lubicon people because it allows them to reach their social and economic goals. It is fair to other native groups because it is consistent with the principles of other recent settlements. And it is fair to the taxpayer because it meets Canada's legal and social obligations to the Band."

Mr. McKnight said that Canada's offer remains open.

Ref: Ken Colby
Federal spokesperson
(403) 269 7006

12/11

STATEMENT BY THE MINISTER

RE: LUBICON LAKE BAND LAND CLAIM

I am sorry to announce that talks between Canada and the Lubicon Lake Indian Band which began in late November have broken off. There is only one issue left in dispute - and that issue is money.

We have solved the problems of membership, we have agreed to the 95 square mile reserve, and we have offered a settlement totalling \$45 million.

We were guided in our negotiations by two tests of fairness: the first was that a settlement had to be consistent with other recent settlements; the second was that a settlement had to address the legitimate social and economic objectives of the Band.

Our offer was to establish the reserve they wanted, plus the equivalent of almost \$87 thousand for each man, woman and child on the Band's membership list.

We have offered to set aside a 95 square mile reserve for the band. That reserve would have mineral rights, including oil and gas, on 79 square miles.

We have offered \$34 million to build a new community. That would provide homes for each family. It would include a band office and a community hall. It would include a school from kindergarten to grade 12 and a new medical centre.

We have offered to establish a block-funding arrangement to deliver what will be close to \$2.5 million a year in federal support programs, including social assistance, in a way that provides administrative flexibility for the band to meet community needs.

13/16

- 2 -

And we have offered a Special Development Plan, to assist the Lubicon in establishing a viable modern economy on the new reserve. This includes:

- \$1 million for planning and staff additions
- \$5 million as "start up" capital
- up to \$4 million for "core" band projects.

While each case is unique and direct comparisons are difficult, this offer certainly compares favourably to other recent settlements.

The offer also directly addresses the Band's priorities.

The eight weeks of negotiation involved my department and the Prime Minister's Office, and drew on expertise and assistance from CEIC, DIST, the Secretary of State, Agriculture, the Department of Communications, and the CRTC. On many issues, our approach was a joint Lubicon/Canada task force.

The issue of membership is a good example of this approach. Canada recognized the Band's right to determine its membership. But membership does not equate to status as a registered Indian, and well over two hundred of the Band's members had not registered or applied for registration. Working together, the government and the Band traced the genealogy, assembled documentation, prepared affidavits and covered all the groundwork for all these people. It appears that, with few exceptions, they qualify to be registered as status Indians. Membership is no longer an issue.

Similar approaches were applied to the reserve construction program to ensure the community would be in harmony with the Band's values and traditions, and to ensure that training, employment and other benefits of construction would accrue to the Band.

14116

- 3 -

We also reached agreement on a new administration program to give the Band greater flexibility to meet community needs; we reached a framework agreement for establishing self-government; and we reached agreement on an approach to most of the economic development priorities of the Band.

For example, we offered to establish a \$500,000 fund in support of Band elders who wanted to continue hunting and trapping. The Band would design and operate the program.

We offered extensive vocational and other training programs. We agreed to provide technical support and 80 per cent funding for such core band businesses as a commercial centre, a motel, a gravel pit, and a "start-up" community farm. Some projects - an indoor hockey rink and free cable TV are two examples - we could not agree to.

But, I am satisfied that our offer to the Band will provide its families with a good standard of living and the opportunity to become fully and gainfully employed.

I regret that the Band has rejected our offer.

However, the Lubicon people need not be deprived of the other benefits of a settlement because of this dispute over money. I have offered to proceed with membership, with establishing the reserve, with constructing a community and with the vocational and entrepreneurial training programs. The Band would still be free to sue Canada and/or Alberta for compensation.

15/11/6

- 4 -

I believe we have been more than fair to the Lubicon people. I must also be fair to those other native communities which have concluded settlements with the government, and I must be fair to the taxpayers of Canada. Our offer discharges our legal and moral responsibilities to the band, and it remains open.

- 30 -

Ref: Ken Colby
Federal spokesperson
(403) 269-7006

CANADA'S OFFER TO THE LUBICON LAKE INDIAN BAND

Membership

- All 514 members recognized as such
- "Fast-track" registration of all who qualify as status Indians

Reserve Area

- a 95 square mile reserve, including 79 square miles of mineral and oil and gas rights

Social Development

- a \$34 million building program, including up to 133 homes, infrastructures, a K-12 school, band offices, community hall, firehall and medical centre
- Block funding of benefits (Alternate Funding Arrangement) to provide a greater autonomy and flexibility
- Development of Self-Government legislation for the Band
- \$500 thousand trust fund, to assist those elders wishing to pursue the traditional way of life.

Economic Development

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- extensive vocational training
- \$400 thousand to establish "training trust"
- \$1 million in planning and band staff support
- \$4 million for specific band businesses

LUBJILEK

Elleonora Jilek
121 Whitewood Pl. N.E.
Calgary, Alberta
T1Y 3S8

Mr. Joe Clark
External Affairs Minister
House of Commons
Ottawa, Ontario
K1A 0A2

April 17, 1989

Dear Mr. Clark,

As a member of an Aboriginal Rights Support Group, and someone who has been following the Lubicon issue for a number of years now, I am writing to you with a request.

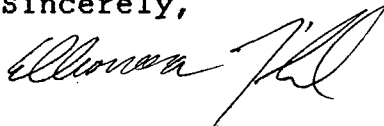
Being a tax payer, I sometimes wish that I had direct input as to where my tax dollars were going, but until military spending ceases altogether, I suspect the Innu of Labrador will have to continue to protest military flights in any way they can. And I applaud them. Assertion of Aboriginal Rights must be supported by us all. Which brings me to the area of concern for which I am writing.

Is it possible for your department to publish all and any formal submissions made to the United Nations Human Rights Commission in New York with regards to the Lubicon land claims? Or may I be sent this information? I respectfully submit that since it is taxpayers' money and the Government of Canada which purports to represent me, I feel it is appropriate for me to be able to access submissions made on behalf of 'my' government. It would also be in your interest to ensure this citizen that information submitted to this committee is accurate and precise.

The Lubicon people of Northern Alberta do not have the resources which you have at your disposal, and I would like to be reassured that the Lubicons have at least an equal opportunity to present their case to the United Nations.

I would appreciate hearing back from you as soon as possible.

Sincerely,



c.c. The Lubicon Lake Nation
Prime Minister Brian Mulroney

External Affairs
CanadaAffaires étrangères
Canada

REFERRED BY THE OFFICE
OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

992-6428 ^{or} 995-1047
ou

TO/À
AU

IMD IMH

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

RECEIVED - REÇU

APR 27 1989

IMH

A. E. D'Aoust

Signature

Date

27-4-89

Department of External Affairs



Ministère des Affaires extérieures

Canada

OTTAWA, Ontario
K1A 0G2

May 17, 1989

IMH-0777

Mr. R. Leitner
121 Whitewood PL. NE.
Calgary, Alberta
T1Y 3S8

ACC	RE. DATE
FILE	DOSSIER
4S-CDA-13-1-3-LUBICON LAKE BAND	

Dear Mr. Leitner:

I am writing in regards to your letter of April 25, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

You inquired whether communications made to the United Nations Human Rights Committee by the Canadian Government concerning the Lubicon Lake Indian Band have been made public. In fact, these communications have not been made public. You will appreciate that the Canadian Government respects and complies with the request of the United Nations that all communications with the Human Rights Committee should remain confidential.

However I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

I trust the above allays your concerns about this matter.

Yours sincerely,

Margaret H. Ford
Acting Director
Human Rights and
Social Affairs Division

Encl.



GOVERNMENT OF CANADA
GOUVERNEMENT DU CANADA

MINISTERE DES AFFAIRES INDIANES
INDIAN AFFAIRS

103/110

Communiqué

1-8903

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11/11/6

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12/16

- 2 -

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14-16

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- 30 -

Ref: Ken Colby
Federal spokesperson
(403) 269-7006

CANADA'S OFFER TO THE LUBICON LAKE INDIAN BAND

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LUBLEITW

LUBLEITW

ROLAND LEITNER

121 IRWOOD PL. NE.

CALGARY, AB T1Y 3S8

(403) 285 - 3415

89 04 25

DEAR MR. CLARK,

AS AN ETHNOLOGIST I HAVE BEEN FOLLOWING THE HISTORY OF THE LUBICON PEOPLE FOR SEVERAL YEARS. I AM VERY SUPPORTIVE OF THEIR STRUGGLE AFTER READING THE ARGUMENTS OF BOTH THE BAND AND OTTAWA.

I UNDERSTAND THAT THE UNITED NATIONS HUMAN RIGHTS COMMITTEE HAS INVITED CANADA TO SUPPLY SUBMISSIONS CONCERNING THE ONGOING STRUGGLE OF THE LUBICON PEOPLE.

HAVE THOSE SUBMISSIONS BEEN MADE PUBLIC? IF SO, PLEASE LET ME KNOW. IF NOT I REQUEST TO BE SUPPLIED WITH COPIES. MONITORING THE ARGUMENTS OF BOTH SIDES IS PARAMOUNT TO A BALANCED PICTURE OF INFORMATION. I AM LOOKING FORWARD TO YOUR EARLY RESPONSE.

SINCERELY,



CC: LUBICON LAKE NATION

MR. JOHN TURNER

MR. ED BROADBENT



External Affairs / Affaires extérieures
Canada Canada

REFERRED BY THE OFFICE
OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

992-6428 or 995-1047
ou

TO/À
AU

IMH *IMH* *Trotter*

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

RECEIVED - REÇU
MAY 3 1989
IMH

R. E. D'ADSL

Signature

3-5-89

Date

ROLAND LEITNER

121 HATWOOD PL. NE.

CALGARY, AB T1Y 3S8

(403) 285 - 3415

89 04 25

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SINCERELY,



CC: LUBICON LAKE NATION

MR. JOHN TURNER

MR. ED BROADBENT

External Affairs
CanadaAffaires extérieures
Canada

51

REFERRED BY THE OFFICE
OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

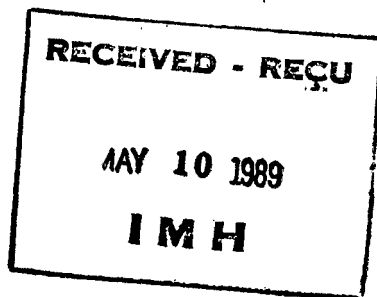
992-6428 ^{or} 995-1047
ou

TO/À
AU

IMD 1714

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES



R. E. Plouffe

Signature

9-5-89

Date

Department of External Affairs



Canada

Ministère des Affaires extérieures

OTTAWA, Ontario
K1A 0G2

May 17, 1989

IMH-0775

Mr. Jean Finley
#3 2021 28 Avenue N.W.
Calgary, Alberta
T2M 2L7

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

Dear Ms. Finley:

I am writing in regards to your letter of April 19, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

In your letter you asked how you might obtain copies of communications made by the Government of Canada to the United Nations Human Rights Committee. You expressed a special interest in communications concerning Canadian aboriginal people, particularly the Lubicon Lake Indian Band.

I regret that I am unable to provide you with copies of the above communications. The policy of the Canadian Government is to maintain the confidentiality of such communications. In doing so, Canada respects and complies with the request of the United Nations that all communications with the Human Rights Committee remain confidential.

However, I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

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Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division

Encl.

003113



Government of Canada
Ministère du Nord

Government of Canada
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10/1/89

Communiqué

1-8903

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12/11

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Similar approaches were applied to the reserve construction program to ensure the community would be in harmony with the Band's values and traditions, and to ensure that training, employment and other benefits of construction would accrue to the Band.

1/1/15

- 3 -

We also reached agreement on a new administration program to give the Band greater flexibility to meet community needs; we reached a framework agreement for establishing self-government; and we reached agreement on an approach to most of the economic development priorities of the Band.

For example, we offered to establish a \$500,000 fund in support of Band elders who wanted to continue hunting and trapping. The Band would design and operate the program.

We offered extensive vocational and other training programs. We agreed to provide technical support and 80 per cent funding for such core band businesses as a commercial centre, a motel, a gravel pit, and a "start-up" community farm. Some projects - an indoor hockey rink and free cable TV are two examples - we could not agree to.

But, I am satisfied that our offer to the Band will provide its families with a good standard of living and the opportunity to become fully and gainfully employed.

I regret that the Band has rejected our offer.

However, the Lubicon people need not be deprived of the other benefits of a settlement because of this dispute over money. I have offered to proceed with membership, with establishing the reserve, with constructing a community and with the vocational and entrepreneurial training programs. The Band would still be free to sue Canada and/or Alberta for compensation.

15/1/6

- 4 -

I believe we have been more than fair to the Lubicon people. I must also be fair to those other native communities which have concluded settlements with the government, and I must be fair to the taxpayers of Canada. Our offer discharges our legal and moral responsibilities to the band, and it remains open.

- 30 -

Ref: Ken Colby
Federal spokesperson
(403) 269-7006

16/16

CANADA'S OFFER TO THE LUBICON LAKE INDIAN BAND

Membership

- All 514 members recognized as such
- "Fast-track" registration of all who qualify as status Indians

Reserve Area

- a 95 square mile reserve, including 79 square miles of mineral and oil and gas rights

Social Development

- a \$34 million building program, including up to 133 homes, infrastructures, a K-12 school, band offices, community hall, firehall and medical centre
- Block funding of benefits (Alternate Funding Arrangement) to provide a greater autonomy and flexibility
- Development of Self-Government legislation for the Band
- \$500 thousand trust fund, to assist those elders wishing to pursue the traditional way of life.

Economic Development

- \$5 million "seed capital"
- extensive vocational training
- \$400 thousand to establish "training trust"
- \$1 million in planning and band staff support
- \$4 million for specific band businesses

LUBFINLE

#3 2021 28 Ave NW
Calgary, Alberta
T2M 2L7
April 19, 1989

Hon. Joe Clark
Minister of External Affairs
House of Commons
Ottawa
K1A 0A6

Re: Canadian submissions on
Human Rights, United Nations

Dear Mr. Clark,

Would you please advise me how I may
obtain copies of Canada's submissions to the
United Nations in matters of Human Rights?

I am particularly interested in obtaining
materials ~~on~~ which state the Canadian
Government's position regarding aboriginal peoples,
especially the Lubicon Band in Alberta.

Would it be possible to be put on a
mailing list to be kept informed on this topic?
If you have difficulty making these materials
available to individuals, where are these materials
deposited (— in which government libraries) so
that I may read them?

Thank you for your help.

Sincerely,

Jean Finley, B.A., B.L.S.
Librarian 003121



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OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

992-6428 ^{or} 995-1047
_{ou}

TO/À
AU

LAND 1/11/89 clear

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

RECEIVED - REÇU

MAY 8 1989

I M H

R. E. D'Aoust

3-5-89

Signature

Date

Department of External Affairs



Canada

Ministère des Affaires extérieures

OTTAWA, Ontario
K1A 0G2

May 17, 1989

IMH-0776

Mr. A.S. Andrucson
Box 923, Main Post Office
Edmonton, Alberta
T5J 2L8

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

Dear Mr. Andrucson:

I am writing in regards to your letter of April 11, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

In your letter you asked that communications made to the United Nations Human Rights Committee by the Canadian Government concerning the Lubicon Lake Indian Band be made public. In fact, the policy of the Canadian Government is to maintain the confidentiality of such communications. In doing so, Canada respects and follows the request of the United Nations that all communications with the Human Rights Committee should remain confidential.

However, I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

I trust that the above allays your concerns about this matter.

Yours sincerely,

Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division

Encl.

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OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

992-6428 ^{or} 995-1047
ou

TO/À
AU

IMD 11/14
J. Trotter

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

M. J. Frost

Signature

Date

19-4-84

EXT 251 (86/08)

LU 12 APPROX

Box 923, Main F.C.
Edmonton, Alberta
T5J 2L8

April 11, 1989


Canadian External Affairs Minister
The Rt.Hon. Joe Clarke
House of Commons
Room 165 East Block
Ottawa, K1A 0A6

Dear Mr. Clark;

I'm writing in regard to Canadian Government submissions on Lubicon Lake to the United Nations Committee on Human Rights. As a Canadian, whose taxes pay for the preparation of these submissions, and as a Canadian on whose behalf these submissions are supposedly made, I would like to see these submissions made public so that I and all Canadians can see what it is we are helping to pay for and what is being said on our behalf.

We are talking about human rights here, not national defense, so what is the reason for secrecy?

Yours truly,

A. S. Andruson


cc:Lubicon Lake Indian Nation
Ross Harvey, MP Edmonton East
John Turner
Ed Broadbent



10/1/89

Communiqué

1-8903

CANADA, LUBICON BREAK OFF TALKS

(OTTAWA, JANUARY 24, 1989) -- Negotiations towards settlement of a land claim by the Lubicon Lake Indian Band have broken off, after the band rejected Canada's offer of \$45 million in addition to the 95 square mile reserve the band wanted.

The band is demanding additional compensation of between \$114 and \$275 million.

During 8 weeks of negotiations, consensus was reached among government and band negotiators on the key issues of membership, reserve size, community construction and delivery of programs and services. However, the negotiators were unable to reach agreement on the issue of cash compensation.

Canada's offer to the band included the establishment of a 95 square mile reserve and \$34 million to develop a new community.

Canada's offer also included a trust fund to preserve traditional band values and a \$10 million Special Development Plan to assist the band in its transition from a traditional hunting and trapping society.

11/16

- 2 -

The Hon. Bill McKnight, Minister of Indian Affairs and Northern Development said the band also rejected an offer to begin construction of the community immediately, without prejudice to the band's right to take the compensation issue to the Federal Court for decision.

Mr. McKnight estimated Canada's offer is equivalent to \$300 thousand in initial benefits and cash per family.

Mr. McKnight said "Canada has a responsibility to be fair on all sides. This offer is fair to the Lubicon people because it allows them to reach their social and economic goals. It is fair to other native groups because it is consistent with the principles of other recent settlements. And it is fair to the taxpayer because it meets Canada's legal and social obligations to the Band."

Mr. McKnight said that Canada's offer remains open.

Ref: Ken Colby
Federal spokesperson
(403) 269 7006

12/1

STATEMENT BY THE MINISTER

RE: LUBICON LAKE BAND LAND CLAIM

I am sorry to announce that talks between Canada and the Lubicon Lake Indian Band which began in late November have broken off. There is only one issue left in dispute - and that issue is money.

We have solved the problems of membership, we have agreed to the 95 square mile reserve, and we have offered a settlement totalling \$45 million.

We were guided in our negotiations by two tests of fairness: the first was that a settlement had to be consistent with other recent settlements; the second was that a settlement had to address the legitimate social and economic objectives of the Band.

Our offer was to establish the reserve they wanted, plus the equivalent of almost \$87 thousand for each man, woman and child on the Band's membership list.

We have offered to set aside a 95 square mile reserve for the band. That reserve would have mineral rights, including oil and gas, on 79 square miles.

We have offered \$34 million to build a new community. That would provide homes for each family. It would include a band office and a community hall. It would include a school from kindergarten to grade 12 and a new medical centre.

We have offered to establish a block-funding arrangement to deliver what will be close to \$2.5 million a year in federal support programs, including social assistance, in a way that provides administrative flexibility for the band to meet community needs.

13/16

- 2 -

And we have offered a Special Development Plan, to assist the Lubicon in establishing a viable modern economy on the new reserve. This includes:

- \$1 million for planning and staff additions
- \$5 million as "start up" capital
- up to \$4 million for "core" band projects.

While each case is unique and direct comparisons are difficult, this offer certainly compares favourably to other recent settlements.

The offer also directly addresses the Band's priorities.

The eight weeks of negotiation involved my department and the Prime Minister's Office, and drew on expertise and assistance from CEIC, DIST, the Secretary of State, Agriculture, the Department of Communications, and the CRTC. On many issues, our approach was a joint Lubicon/Canada task force.

The issue of membership is a good example of this approach. Canada recognized the Band's right to determine its membership. But membership does not equate to status as a registered Indian, and well over two hundred of the Band's members had not registered or applied for registration. Working together, the government and the Band traced the genealogy, assembled documentation, prepared affidavits and covered all the groundwork for all these people. It appears that, with few exceptions, they qualify to be registered as status Indians. Membership is no longer an issue.

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1116

- 3 -

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15/1/16

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- 30 -

Ref: Ken Colby
Federal spokesperson
(403) 269-7006

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LUB ANDRUCSON

Box 923, Main P.C.
Edmonton, Alberta
T5J 2L8

April 11, 1989

Canadian External Affairs Minister
The Rt.Hon. Joe Clarke
House of Commons
Room 165 East Block
Ottawa, K1A 0A6

Dear Mr. Clark;

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We are talking about human rights here, not national defense, so what is the reason for secrecy?

Yours truly,

A. S. Andrucson



cc:Lubicon Lake Indian Nation
Ross Harvey, MP Edmonton East
John Turner
Ed Broadbent

External Affairs
CanadaAffaires extérieures
Canada

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OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
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AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

992-6428 ^{or} 995-1047
ou

TO/A
AU

~~LRD~~

1114

J. Trotter

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES

R. E. D'Aoust

Signature

Date

19-4-89

IMH/J.Trottier/992-6664

PROTECTED ACC

May 16, 1989

TO FILE (Through Dan Livermore)

FROM IMH

FILE	45-CD-13-1-3-Randell
LCC	37.4

---Meeting to Discuss Possible Lubicon Decision By HRC

There was a meeting at Justice on May 16, 1989 to discuss reaction to Genev tel regarding the likelihood of HRC making decision on substantive as opposed to admissibility issue at the next session in July 1989.

2. The consensus of the meeting was that there should be a CDN communication by June 15. That should express indignation at violation of due process. There should be a recapitulation of the points made previously. There could be a short history of the negotiations with perhaps a small chart illustrating what Lubicon had demanded in a number of areas and what Canada had offered. (DIAND/Coulter will supply a chart.) We should refer to the domestic remedies available including negotiations. Regarding the substantive issues, [REDACTED]

[REDACTED] Moreover, it might be counter-productive in that it could provide suggestions to the Lubicon (and the Cttee) regarding other grounds they might wish to consider. Some consideration should be given to addressing one or two of the most likely substantive issues. We might offer suggestions

3. Regarding the issue of a public communications strategy to pursue if a decision comes down against Canada, [REDACTED]

[REDACTED]

The favoured approach at the moment (depending on what basis the Cttee came to their decision) seemed to be to indicate that Canada was attempting to comply with the decision through a negotiations process. Then we could list some of the substantive steps taken. There will be another discussion (at an unspecified later date) together with departmental communications officers to discuss communications strategy.

4. DIAND/Coulter said that another communication would not be enough. He wanted vigorous lobbying of experts and states. He said if necessary he was ready to go to Minister of DIAND on matter. We told him that we had no leverage on Cttee members, that there was no evidence that lobbying would be effective and every indication that it would be counter-productive. We could

say whatever we had to say in writing without running the risks involved in oral communications. Moreover, such lobbying would be contrary to our past attitude of treating the Cttee as the equivalent of a judicial body. In addition, whatever the Lubicon may have done by way of lobbying of the Cttee, the perception would be that there was a great difference between lobbying by the alleged victims and and by the state concerned. FPRO/Caron and Justice/Freeman agreed with us; Justice/Low tended to our viewpoint as well [REDACTED]

[REDACTED] Even DIAND/Whitaker did not seem particularly keen on the lobbying notion.

s.23

A handwritten signature in cursive script, reading "James C. Trotter". The signature is written in dark ink on a white background.

UNCLASSIFIED
FACSIMILE

TELECOPIE
NONCLASSIFIE

GVA 05/16 OTT
GVA LDN
GVA SKM

GVA NYK
GVA BRU
GVA CBA

GVA WDC
GVA BON
GVA PAR
GVA TKO

FILE/DOSSIER: 45-13-2-LUBICON

PAGE 1 OF/DE 13

FM/DE GENEV YTGR 3192 16MAY1989

TO/A EXTOTT JLO DELBY 161300

INFO ^{BH} JUSTOTT/FREEMAN/LOW/WEISER

^{BH} INAHULL/LAFRENIERE/WHITAKER/HUDSON

^{BH} FPROOTT/OACA/CARON

DISTR IMH JCD IMD

REF OURTEL YTGR3083 12MAY

---LUBICON BAND COMPLAINT TO HUMAN RIGHTS CTTEE

ATTACHED IS COPY OF SECT NOTE AND LUBICON SUBMISSION
(SUPPLEMENT 10) SENT BY EARLIER FAX 3016 8 MAY WHICH YOU DO NOT
APPEAR TO HAVE RECEIVED.

605519
45-Cda-13-1-3 DOSSIER
Lubicon
Paper Band

CONCERNITRE
1002/100
16 MAY 1989 15 28

DRAFTER/REDACTEUR

R. HYNES

TELEPHONE NBR

APPROVED/APPROUVE

R. HYNES

003137

P. 1/28

16 MAY '89 22:03 MISSION DU CANADA +4122 7347919

OFFICE DES NATIONS UNIES A GENÈVE

CENTRE POUR LES DROITS DE L'HOMME



UNITED NATIONS OFFICE AT GENEVA

CENTRE FOR HUMAN RIGHTS



Télégrammes : UNATIONS, GENÈVE

Télex : 28 96 96

Téléphone : 34 60 11 31 02 11

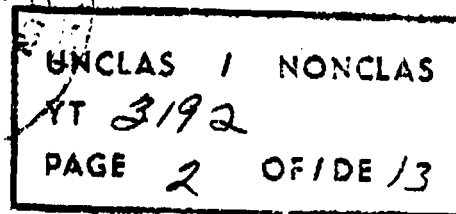
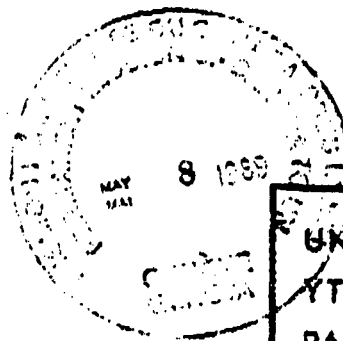
RÉF. N°:

(À rappeler dans la réponse) G/SO 215/51 CANA (38)

167/1984

Palais des Nations

CH - 1211 GENÈVE 10



BEST AVAILABLE COPY

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 letter dated 21 March 1989 transmitting a further submission, dated 22 March 1989, 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.

The Secretariat also has the honour to inform the State party that at its recently concluded 35th session, the Human Rights Committee decided that it is now in possession of all the information required to adopt a decision in the case, and that it would do so at its 36th session, to be held in Geneva from 10 to 28 July 1989.

ME

5 May 1989

BEST AVAILABLE COPY

UNCLAS / NONCLAS
YT 3192
PAGE 5 OF 1 DE 13
CURTIS

VAN NESS, FELDMAN, SUTCLIFFE &

A PROFESSIONAL CORPORATION

1050 THOMAS JEFFERSON STREET, N.W.

SEVENTH FLOOR

WASHINGTON, D. C. 20007

(202) 298-1600

FACSIMILE

(202) 338-2361

(202) 338-2416

WRITER'S DIRECT DIAL NUMBER

March 21, 1989

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

LISA A. SHAPIRO
JESSICA S. LEFEVRE
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MARGARET A. MOORE
DONALD F. SANTA, JR.
MICHAEL A. SWIGER
SAM KALEN
BRUCE S. GEMING
ANTHONY A. TARGAN
BENJAMIN L. ISRAEL
ANTHONY WILSON
STEPHEN C. FOTIS
NOREEN TAMA BELLEGARDE
JOHN J. BUCHOVECKY
ELLEN S. YOUNG

OF COUNSEL

HOWARD ELIOT SHAPIRO
ARTHUR JOHN ARMSTRONG
CYNTHIA INGERSOLL

*NOT ADMITTED IN DISTRICT OF COLUMBIA

Mr. Jakob Th. Moller
Chief, Communications Unit
c/o New York Human Rights Office
S-2914
United Nations Office
New York, N.Y. 10017

RE: Communication No. 167/1984

Dear Mr. Moller:

Thank you for transmitting to the Band a copy of the
2 February, 1989 submission by the Government of Canada to the
U.N. Committee on Human Rights.

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. 10 to Communication No. 167/1984, the
Band's comments on the 2 February, 1989 submission by the
Government of Canada. Also enclosed is a more lengthy briefing
paper prepared by the Band describing the events surrounding the
recent breakdown of negotiations between the Lubicon Lake Band and
the Government of Canada.

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 truly,

Jessica S. Lefevre
Jessica S. Lefevre

Enclosures

UNCLAS	1	NONCLAS
YT	3192	
PAGE	4	OF 1 DE 13

SUPPLEMENT NO. 10

TO

COMMUNICATION NO. 167/1984

22 MARCH 1989

COMMENTS ON 2 FEBRUARY 1989 SUBMISSION

BY THE GOVERNMENT OF CANADA

UNCLAS / NONCLAS
YT 3192
PAGE 5 OF 1 DE 13

The Lubicon Lake Band respectfully submits the following comments as a response to the submission of the Government of Canada, dated February 2, 1989, and as a further update for the Committee on the status of the Lubicon people.

Introduction

As has occurred regularly in the past, the Government of Canada once again seeks to abuse the Committee's process as a means of disseminating misleading information concerning its treatment of the Lubicon people. The representations of Canada's present submission are not merely misleading, they virtually are entirely untrue.

Officials of the Canadian Government are aware that the Lubicon community's economic base has been completely destroyed and that the community, as a result, is destitute. Community leaders are struggling to hold the people together in the hope of rebuilding the Lubicon society on a new economic base. Given the economic and social devastation wrought on the Lubicon people by Canada, their goal of achieving the very difficult and expensive transition from a traditional hunting and trapping economy to a hopefully viable mixed economy is now unattainable without the support of the Federal Government. However, as Canada's handling of negotiations with the Lubicon people, and its present submission clearly demonstrate, the Federal Government has no intention of making such support available.

The Federal Government of Canada - Lubicon Lake Band Negotiations

The recent negotiations have been held directly between representatives of the Band and representatives of the Canadian Prime Minister. In retrospect, the Lubicon people realize that these negotiations did not in any way represent a serious attempt at settlement of the Lubicon issues. Rather, they were merely one aspect of the media program planned and implemented for Prime Minister Mulroney's reelection campaign.

UNCLAS 1 NONCLAS
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PAGE 6 OF 1 DE 13

-2-

Once that campaign was successfully completed, the negotiations were brought to an abrupt end — in such a manner as to make it appear to be the Lubicon's doing.

In order to end the negotiations, federal negotiators, without forewarning to the Lubicon negotiators appeared at a session in which a Lubicon counter-offer was to be discussed, and instead tabled Canada's present "formal offer" as a final take-it-or-leave-it proposition. Based on the negotiations to that point and the contents of the offer, Canadian officials certainly had every reason to be confident that the Lubicon Lake Band would find the offer unacceptable, for a number of reasons, including those discussed below. Conversely, had the Band accepted the offer, as is pointed out below, it would have been largely illusory since Canada in fact has committed itself to virtually nothing in the offer.

As a further demonstration of Canada's cynical approach to negotiations with the Lubicon Lake Band, the Federal Government's public relations representative had a press packet describing the breakdown of negotiations prepared prior to the meeting in which Canada's "formal offer" was made. These packets were released to the press as soon as the meeting was concluded. Within three days, Canada had mailed the packets to members of the international press and to individuals throughout North America and Europe.

With the failure of these negotiations, the Band clearly has no further recourse within the Canadian political system. Thus, the Lubicon people are forced to continue to look to the international community for support in their attempt to survive as a people and to establish rights for themselves within Canadian society.

Canada's "Formal Offer"

In response to the points raised by Canada with respect to its "formal offer," the Lubicon Lake Band respectfully suggests that the Committee compare the

UNCLAS	1	NONCLAS
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PAGE	7	OF 1 DE 13

-3-

representations made by Canada in its submission with the actual text of the offer. Such a comparison is sufficient to prove the lack of veracity of Canada's representations.

The most telling items in the Canadian offer are the legal releases set forth at pages 7 through 9 of the offer. In agreeing to this offer, the Lubicon people would leave themselves and their children with virtually no legal redress within the courts of Canada with respect to any matter in any way related to the present issues. The Band also would be required to relinquish its right to appear before this Committee.

Even were Canada's offer adequate to meet the Band's social and economic needs as they attempt to rebuild their community, it is astonishing that a government would publicly make so unconscionable a demand of a people subject to its jurisdiction.

Moreover, the offer for which the Band is required to foreclose itself from all forms of legal redress, in major part, is fiscally inadequate to support economic redevelopment in the community. And in several essential respects, such as the establishment of agricultural programs, the offer is nothing more than a proposal to study the Lubicon's proposals.

In short, the Lubicon Lake Band has been offered an agreement that would leave the community economically destitute, as it now is, and would strip its members of any legal means of redressing their situation.

To outline briefly for the Committee a comparison of certain of the points raised by Canada:

1. Canada's "formal offer," in fact commits the Federal Government only to provide housing and a school. Completely lacking is any commitment to provide the facilities and equipment necessary for the Lubicon people to manage their own affairs, such as facilities for essential vocational training, support for commercial and

UNCLAS 1 NONCLAS
YT 3192
PAGE 8 OF 13

-4-

economic development, or any basis from which the Band might achieve financial independence.

2. Contrary to Canada's statement that consensus has been reached on the majority of issues, including membership, reserve size and community construction, agreement has not been reached on any of these issues.

Despite the submission of voluminous geneological documentation by Band members, the Government has yet to agree that all members of the Lubicon Lake Band are entitled to participate in a settlement. While the size of the reserve appears to have been agreed, the actual land to be selected and transferred has not been identified, since agreement has not been reached on a number of key issues including the location of reserve boundaries. Canada's formal offer does not provide for "transfer to the Band of a 95 square mile . . . reserve." Rather, it contains "Proposals for Discussion" of this matter.

The Government's community construction offer is both fiscally inadequate to provide for facilities essential to community development, and completely neglects logistical questions of how such development might be accomplished. As an example of the latter, the Band's development program contemplates on-the-job training through a vocational training center as a means of providing the labor to physically rebuild the community while providing vocational training to its members. However, Canada's offer would not include the vocational facilities necessary to accomplish this. Community members would have to leave the area to receive vocational training, leaving the community with no labor resource.

Support for a community commercial center, to include a grocery, hardware and drygoods store, is in the form of an agreement to seek ministerial approval in principle for a grant from the Native Economic Development Fund.

UNCLAS / NONCLAS
YT 3 / 92
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-5-

With respect to the delivery of programs and services, only the most general "offer" is made that unspecified program and service costs might be available through existing Federal Indian programs. All Indian people of Canada are eligible to apply for these programs, and grants are made on the basis of available funding.

3. In point 4 of its submission, Canada states that "key terms" of its formal offer include "two and a half million dollars a year in federal support programs . . . to be administered in a way that would provide flexibility for the Band to meet community needs." In fact, Canada's offer contains no mention of such "federal support programs" and there has been no discussion, much less agreement, concerning a figure of "two and a half million dollars."

4. With respect to the figures set forth at item 5 of Canada's submission, there is no provision in the offer for "one million dollars for planning and staff additions." Rather, the offer refers to "up to \$500,000 spread over 5 years for staff support and other resources." There is no provision in the offer for "five million dollars 'start up' capital." Rather the offer would provide the interest from a \$5 million fund, or approximately \$50,000 per year to be used as "on-going seed capital to lever project funding from public and private sources and to provide assistance to Band entrepreneurs."

There is no provision for "four million dollars for specific Band businesses." The offer provides that "the (Federal) Department of Industry, Science and Technology (DIST) will seek ministerial approval in principle for funding from the Native Economic Development Fund (NEDF), up to a maximum of (80% or) \$4 million for . . . projects, provided that they meet normal program requirements."

UNCLAS	1	NONCLAS
YT	3192	
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-6-

There is no provision for "four hundred thousand dollars to establish a training trust." Rather, Canada's offer provides that the "Canada Employment and Immigration Commission (CEIC) will negotiate the establishment of a training Trust Fund with the Band Council, involving a grant of up to \$400,000 to be paid to the Band over three years, on the condition that this amount of \$400,000 is matched by the Band."

5. While Canada claims that its offer amounts to "approximately 45 million dollars in benefits and programs," as demonstrated above the majority of these funds in fact are uncommitted. And without access to any system of law, the Lubicon Lake Band would be entirely disabled from attempting to obtain any commitments from Canada in the future.

6. As Canada states in its submission, the Federal Government now refuses to recognize any right of the Lubicon people to compensation for the economic and other losses they have suffered. Canada's statement that its offer is "without prejudice to the Band's right to sue the Government of Canada for compensation" of course is meaningless in light of the legal releases it has included as part of its offer.

As the Band has pointed out to the Committee in the past, Mr. E. Davie Fulton's federally commissioned study of the Lubicon situation resulted in a finding that the Canadian Government in fact is liable for compensation to the Lubicon people for the significant losses they have suffered.

Furthermore, a key element in Lubicon plans to achieve social and economic self-sufficiency is the establishment of a capital fund to produce interest revenues in perpetuity for the Lubicon people. These interest revenues would give the Lubicon people financial capability independent of either level of Canadian Government to undertake community projects and help their members establish for-profit entrepreneurial enterprises. The alternative, understandably unacceptable to the Lubicon

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people, is perpetual dependence upon an endless succession of ever-changing, demonstrably inadequate, typically underfunded and consistently disastrous Government programs for the resources which they require.

Every modern aboriginal land rights settlement has consisted of a package of rights and benefits which included land, housing, community infrastructure, community facilities, provision for socio-economic development, and, as a separate and distinct item, substantial financial compensation. The Alaska settlement in the U.S., for example, provided nearly a billion dollars in compensation; the James Bay settlement in Canada provided \$225 million; the Northwest Territories Agreement-In-Principle provides \$500 million and the recent Yukon Agreement-In-Principle provides \$257 million. It has always been the intention of the Lubicon people to use such compensation monies obtained through negotiation of their aboriginal land rights to create the capital fund mentioned above.

6. Finally, in citing to Section 10 of the Constitution Act, 1930, as the legal basis for Alberta's transfer of land back to the Federal Government in order to provide a reserve for the Band, Canada once again seeks to characterize the Band's rights as treaty rights rather than aboriginal rights.* / As the Band has pointed out in the past, the Lubicon people have never entered a treaty with the Canadian Government. However, a characterization of the Band's rights as treaty rather than aboriginal would enable Canada to further limit its responsibilities to the Lubicon people.

* / Section 10 provides for the making of such transfers in order to enable Canada "to fulfill its obligations under the treaties with the Indians of the Province."

-8-

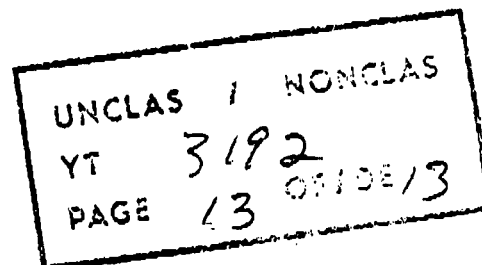
UNCLAS	/	NONCLAS
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Conclusion

Despite the picture Canada has attempted to paint for the Committee, as well as for the media, the intent of the Federal Government, as it has been throughout, is to starve the Lubicon people off of their land, or if they insist on staying, to force them to subsist at a minimal poverty level as wards of the State. The proof of this statement is in Canada's continued lack of good faith in dealing with the Lubicon people, domestically or in the international sphere.

Based on the facts contained in its present and past submissions to the Committee, the Lubicon Lake Band respectfully requests that the Committee find the Government of Canada to be in violation of the Committee's request pursuant to rule 86 of its provisional rules of procedure (CCPR/C/30/D/167/1986, 22 July 1987), and that the Committee move to a decision on the merits of the Lubicon Lake Band's pending claim.

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



Submitted by:

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

Prepared with the assistance of:

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

Department of External Affairs



Canada

Ministère des Affaires extérieures

OTTAWA, Ontario
K1A 0G2

May 16, 1989

IMH-0778

Mr. Paul Gill Herwig
Schroetterg, 46
A-1100 Vienna
Austria

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

Dear Mr. Herwig:

I am writing in regards to your letter of April 26, 1989 to the Secretary of State for External Affairs, the Right Honourable Joe Clark. Mr. Clark has asked me to reply on his behalf.

You inquired whether communications made to the United Nations Human Rights Committee by the Canadian Government concerning the Lubicon Lake Indian Band could be made public. In this regard, you will appreciate that the Canadian Government respects and follows the request of the United Nations that all communications with the Human Rights Committee remain confidential.

However I am enclosing, for your information, material issued by the Department of Indian and Northern Affairs in January 1989. This contains details about the negotiations between the Lubicon Lake Indian Band and the Government of Canada.

I trust the above allays your concerns about this matter.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Margaret H. Ford".

Margaret H. Ford
A/Director
Human Rights and
Social Affairs Division



10/1/89

Communiqué

1-8903

CANADA, LUBICON BREAK OFF TALKS

(OTTAWA, JANUARY 24, 1989) -- Negotiations towards settlement of a land claim by the Lubicon Lake Indian Band have broken off, after the band rejected Canada's offer of \$45 million in addition to the 95 square mile reserve the band wanted.

The band is demanding additional compensation of between \$114 and \$275 million.

During 8 weeks of negotiations, consensus was reached among government and band negotiators on the key issues of membership, reserve size, community construction and delivery of programs and services. However, the negotiators were unable to reach agreement on the issue of cash compensation.

Canada's offer to the band included the establishment of a 95 square mile reserve and \$34 million to develop a new community.

Canada's offer also included a trust fund to preserve traditional band values and a \$10 million Special Development Plan to assist the band in its transition from a traditional hunting and trapping society.

11/1/6

- 2 -

The Hon. Bill McKnight, Minister of Indian Affairs and Northern Development said the band also rejected an offer to begin construction of the community immediately, without prejudice to the band's right to take the compensation issue to the Federal Court for decision.

Mr. McKnight estimated Canada's offer is equivalent to \$300 thousand in initial benefits and cash per family.

Mr. McKnight said "Canada has a responsibility to be fair on all sides. This offer is fair to the Lubicon people because it allows them to reach their social and economic goals. It is fair to other native groups because it is consistent with the principles of other recent settlements. And it is fair to the taxpayer because it meets Canada's legal and social obligations to the Band."

Mr. McKnight said that Canada's offer remains open.

Ref: Ken Colby
Federal spokesperson
(403) 269 7006

12/11

STATEMENT BY THE MINISTER

RE: LUBICON LAKE BAND LAND CLAIM

I am sorry to announce that talks between Canada and the Lubicon Lake Indian Band which began in late November have broken off. There is only one issue left in dispute - and that issue is money.

We have solved the problems of membership, we have agreed to the 95 square mile reserve, and we have offered a settlement totalling \$45 million.

We were guided in our negotiations by two tests of fairness: the first was that a settlement had to be consistent with other recent settlements; the second was that a settlement had to address the legitimate social and economic objectives of the Band.

Our offer was to establish the reserve they wanted, plus the equivalent of almost \$87 thousand for each man, woman and child on the Band's membership list.

We have offered to set aside a 95 square mile reserve for the band. That reserve would have mineral rights, including oil and gas, on 79 square miles.

We have offered \$34 million to build a new community. That would provide homes for each family. It would include a band office and a community hall. It would include a school from kindergarten to grade 12 and a new medical centre.

We have offered to establish a block-funding arrangement to deliver what will be close to \$2.5 million a year in federal support programs, including social assistance, in a way that provides administrative flexibility for the band to meet community needs.

13/16

- 2 -

And we have offered a Special Development Plan, to assist the Lubicon in establishing a viable modern economy on the new reserve. This includes:

- \$1 million for planning and staff additions
- \$5 million as "start up" capital
- up to \$4 million for "core" band projects.

While each case is unique and direct comparisons are difficult, this offer certainly compares favourably to other recent settlements.

The offer also directly addresses the Band's priorities.

The eight weeks of negotiation involved my department and the Prime Minister's Office, I drew on expertise and assistance from CEIC, DIST, the Secretary of State, Agriculture, the Department of Communications, and the CRTC. On many issues, our approach was a joint Lubicon/Canada task force.

The issue of membership is a good example of this approach. Canada recognized the Band's right to determine its membership. But membership does not equate to status as a registered Indian, and well over two hundred of the Band's members had not registered or applied for registration. Working together, the government and the Band traced the genealogy, assembled documentation, prepared affidavits and covered all the groundwork for all these people. It appears that, with few exceptions, they qualify to be registered as status Indians. Membership is no longer an issue.

Similar approaches were applied to the reserve construction program to ensure the community would be in harmony with the Band's values and traditions, and to ensure that training, employment and other benefits of construction would accrue to the Band.

11/15

- 3 -

We also reached agreement on a new administration program to give the Band greater flexibility to meet community needs; we reached a framework agreement for establishing self-government; and we reached agreement on an approach to most of the economic development priorities of the Band.

For example, we offered to establish a \$500,000 fund in support of Band elders who wanted to continue hunting and trapping. The Band would design and operate the program.

We offered extensive vocational and other training programs. We agreed to provide technical support and 80 per cent funding for such core band businesses as a commercial centre, a motel, a gravel pit, and a "start-up" community farm. Some projects - an indoor hockey rink and free cable TV are two examples - we could not agree to.

But, I am satisfied that our offer to the Band will provide its families with a good standard of living and the opportunity to become fully and gainfully employed.

I regret that the Band has rejected our offer.

However, the Lubicon people need not be deprived of the other benefits of a settlement because of this dispute over money. I have offered to proceed with membership, with establishing the reserve, with constructing a community and with the vocational and entrepreneurial training programs. The Band would still be free to sue Canada and/or Alberta for compensation.

15/16

- 4 -

I believe we have been more than fair to the Lubicon people. I must also be fair to those other native communities which have concluded settlements with the government; and I must be fair to the taxpayers of Canada. Our offer discharges our legal and moral responsibilities to the band, and it remains open.

- 30 -

Ref: Ken Colby
Federal spokesperson
(403) 269-7006

12/16

CANADA'S OFFER TO THE LUBICON LAKE INDIAN BAND

Membership

- All 514 members recognized as such
- "Fast-track" registration of all who qualify as status Indians

Reserve Area

- a 95 square mile reserve, including 79 square miles of mineral and oil and gas rights

Social Development

- a \$34 million building program, including up to 133 homes, infrastructures, a K-12 school, band offices, community hall, firehall and medical centre
- Block funding of benefits (Alternate Funding Arrangement) to provide a greater autonomy and flexibility
- Development of Self-Government legislation for the Band
- \$500 thousand trust fund, to assist those elders wishing to pursue the traditional way of life.

Economic Development

- \$5 million "seed capital"
- extensive vocational training
- \$400 thousand to establish "training trust"
- \$1 million in planning and band staff support
- \$4 million for specific band businesses

LUBERWIG V Vienna, April 26, 1989
(Europe)

P. G. M. HERWIG (sr.),
rœlberg, 46,
A 1100 VIENNA,
AUSTRIA ~ EUROPE.

I. T.

HON. MINISTER MR. JOE CLARKE
"DEPARTMENT OF EXTERNAL AFFAIRS"
OTTAWA / Ontario - CANADA.

Dear Mr Clarke,

We in Europe got informed of an
intervention and submissions sent
to UN HUMAN RIGHTS COMMITTEE,
CONCERNING THIS "LUBICON LAKE CASE",
by the Canadian Government.

The contents and arguments of the
Canadian UN-SUBMISSIONS -
CAN YOU BE SO KIND TO MAKE THEM
PUBLIC, THAT WE COULD READ,
because we are very interested in
those contents, being in case much obliged.

Thanking you in advance!

Respectfully and Sincerely,
Paul Herwig

[Paul G. M. HERWIG sr.]
A-1100 Vienna -
- Austria - Europe -



Canada

Canada

REFERRED BY THE OFFICE
OF THE SECRETARY OF
STATE FOR EXTERNAL
AFFAIRS,
MINISTER'S RECORDS UNIT

TRANSMIS PAR LE CABINET
DU SECRÉTAIRE D'ÉTAT
AUX AFFAIRES EXTÉRIEURES
SECTION DES DOSSIERS
DU MINISTRE

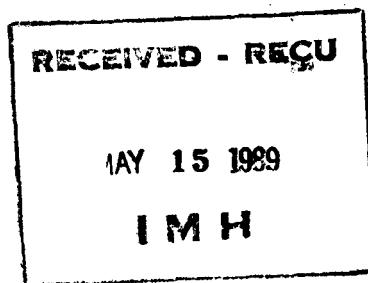
992-6428 ^{or} 995-1047
ou

TO/À
AU

ENDIMH

- ☐ FOR INFORMATION AND ANY NECESSARY ACTION
POUR EXAMEN ET SUITE À DONNER, S'IL Y A LIEU
- ☒ FOR DIVISIONAL REPLY
POUR RÉPONSE PAR LA DIRECTION

REMARKS/REMARQUES



R. E. D'Aoust

Signature

Date

12-5-89

C O N F I D E N T I A L

FM GENEV YTGR3083 12MAY89

TO EXTOTT JLO DELIVER BY 121030

INFO BH JUSTOTT/FREEMAN/LOW/WEISER FPROOTT/OACA/CARON DE OTT INAHULL/
LAFREVIERE/WHITAKER/HUDSON DE CCI

DISTR IMH JCE IMD IFB JFB

REF OURFAX YTGR3016 08MAY(NOTAL)

---INNATL COVENANT ON CIVIL AND POLITICAL RIGHTS(ICCPR)COMMUNICATION

BY LUBICON LAKE BAND UNDER OPTIONAL PROTOCOL

SUMMARY:CONTACTS WITH SECRETARIAT ON LONGSTANDING COMPLAINT BY LUBICON
LAKE BAND BEFORE HUMAN RIGHTS CTTEE SUGGEST THAT CTTEE NOW INTENDS TO
TAKE FINAL DECISION ON MERITS OF CASE AT ITS NEXT SESSION IN JULY,
NOTWITHSTANDING CDN GOVTS TWO YEAR OLD REQUEST FOR PRIOR RECONSIDERA-
TION OF ISSUE OF ADMISSIBILITY.WE ALSO HAVE DISTURBING(NOT/NOT TO
SAY SURPRISING)IMPRESSION THAT MAJORITY OF CTTEE MEMBERSHIP IS INTENT
ON ARRIVING AT A CONCLUSION WHICH ENTAILS FINDING OF SOME VIOLATION
BY CDN GOVT OF ITS OBLIGATIONS UNDER THE COVENANT.IMMEDIATE CONSIDER-
ATION SHOULD BE GIVEN TO GOVERNMENT APPROACH TO BOTH PROCEDURAL AND
SUBSTANTIVE ASPECTS OF THIS MATTER,AND TO POSSIBLE NEED FOR A
COMPREHENSIVE WRITTEN SUBMISSION WHICH MIGHT AT LEAST PLACE DISPUTE
IN APPROP PERSPECTIVE FOR CTTEE IF NOT/NOT INDUCE IT TO POSTPONE
DECISION OR RECONSIDER ITS VIEWS ON MATTER.

2.REPORT:IN LIGHT OF CENTRE FOR HUMAN RIGHTS NOTE CONTAINED IN REF
FAX,WE HAVE HAD SERIES OF CONVERSATIONS OVER PAST COUPLE OF DAYS WITH
...2

ACC	605504
FILE	45-00a-13-1-3-Subicon
DISSEMIN	Lake Band

PAGE TWO YTGR3083 CONF

UN OFFICIALS RESPONSIBLE FOR SERVICING HUMAN RIGHTS CTTEE ON OPTIONAL PROTOCOL MATTERS (JAKOB MOLLER, HEAD OF COMMUNICATIONS SECTION, AND ALFRED DE ZAYAS, CHIEF DRAFTSMAN OF MOST CTTEE DECISIONS UNDER OPTIONAL PROTOCOL). WE INITIATED THESE DISCUSSIONS WITH VIEW TO OBTAINING CLARIFICATION OF STATEMENT IN CENTRES NOTE THAT QUOTE AT ITS RECENTLY CONCLUDED 35TH SESSION, THE HUMAN RIGHTS CTTEE DECIDED THAT IT IS NOW IN POSSESSION OF ALL THE INFORMATION REQUIRED TO ADOPT A DECISION IN THE CASE, AND THAT IT WOULD DO SO AT ITS 36TH SESSION, TO BE HELD IN GENEVA FROM 10 TO 28 JULY 1989. UNQUOTE.

3. UPSHOT OF THESE DISCUSSIONS IS THAT SECRETARIAT DOES INDEED UNDERSTAND CTTESS INTENTION TO BE THAT OF TAKING FINAL DECISION ON MERITS OF LUBICON COMMUNICATION, RATHER THAN MERELY A DECISION ON REQUEST OF CDN GOVT, PURSUANT TO RULE 93(4) OF CTTEE RULES OF PROCEDURE, THAT EARLIER DECISION ON ADMISSIBILITY OF THIS MMUNICATION SHOULD BE REVIEWED.

4. SECRETARIATS EXPLANATION OF THIS SITUATION IS NOT/NOT ENTIRELY SATISFYING. MOLLER INDICATED THAT, IN VIEW OF TIME THAT HAS ELAPSED SINCE CDA REQUESTED RECONSIDERATION OF ADMISSIBILITY ISSUE, CTTEE SEEMS TO HAVE QUOTE FORGOTTEN UNQUOTE ABOUT GOVTS REQUEST OR, AT LEAST, TO HAVE ASSUMED THAT THIS REQUEST HAS BEEN OVERTAKEN BY EVENTS IN WHICH LUBICON BAND AND CDN GOVT APPEAR TO HAVE MOVED ON TO DEBATE ON SUBSTANTIVE ISSUES IN PLAY. LATTER IMPRESSION MIGHT, HE SAID, HAVE BEEN ENCOURAGED BY SUBSTANTIVE NATURE OF MANY WRITTEN EXCHANGES OVER PAST TWO YEARS, FOCUSSED ON UNFOLDING NEGOTIATIONS BETWEEN BAND AND GOVT.

...3

PAGE THREE YTGR3083 CONF

FAILURE OF SECRETARIAT REPS TO REMIND CTTEE OF STATE OF AFFAIRS IN MORE ACCURATE TERMS WAS EXPLAINED AS REFLECTION OF SECRETARIATS INABILITY TO INTERVENE REGULARLY IN CTTEES DELIBERATIONS WITHOUT OVERSTEPPING BOUNDS OF ITS PASSIVE SUPPORT ROLE.

5. MOLLER READILY ADMITTED THAT POINTS MADE IN CDN SUBMISSIONS OVER PAST TWO YEARS--BOTH ON ISSUE OF EXHAUSTION OF REMEDIES (AND IMPLICATIONS THEREOF FOR ADMISSIBILITY) AND ON NEED FOR MORE SPECIFIC INDICATION OF CASE TO BE MET ON MERITS--WERE ENTIRELY REASONABLE. HE ACKNOWLEDGED CTTEE BEHAVIOUR DURING THIS PERIOD HAD GIVEN US NO/NO REASON TO EXPECT THAT THIS REQUEST MIGHT BE SUMMARILY REJECTED OR DISREGARDED. HE NOTED HOWEVER THAT THERE WAS AMPLE PRECEDENT FOR CTTEE TO REJECT A REQUEST UNDER RULE 93(4) AND MOVE IN SAME SITTING TO A FINAL DECISION ON MERITS OF CASE (EG HAMMEL V MADAGASCAR, CCPR/C/29/D/155/1983 OF 21 DEC 1978; AND PENARRIET V BOLIVIA, CCPR/R/31/D/176/1984 OF 24 NOV 87). ON OTHER HAND, THERE WAS NO/NO PRECEDENT IN WHICH CTTEE HAD, IN A SEPARATE DECISION, REJECTED A GOVT REQUEST FOR REVIEW OF AN ADMISSIBILITY DECISION BUT POSTPONED ACTION ON MERITS OF CASE UNTIL A SUBSEQUENT SITTING. RULE 93(4) WAS, MOLLER NOTED, FRAMED IN PURELY DISCRETIONARY TERMS: QUOTE THE CTTEE MAY REVIEW ITS DECISION THAT A COMMUNICATION IS ADMISSIBLE IN THE LIGHT OF ANY EXPLANATION OR STATEMENTS SUBMITTED BY THE STATE PARTY PURSUANT TO THIS RULE UNQUOTE. SIX MONTH TIMEFRAME (AFTER INITIAL ADMISSIBILITY DECISION) FOR SUBMISSION OF GOVT COMMENTS ON MERITS WAS HOWEVER FRAMED IN MANDATORY ...4

PAGE FOUR YTGR3083 CONF

TERMS. CTTEE WOULD THUS BE ACTING FULLY WITHIN BOUNDS OF ITS RULES IF IT WERE TO CONFIRM EARLIER ADMISSIBILITY DECISION AND EXPRESS FINAL VIEWS ON THE MERITS IN ONE FELL SWOOP.

6. MOLLERS REASONING DOES NOT/NOT DETRACT FROM INHERENT REASONABLENESS OF OUR REQUEST FOR MORE SPECIFICITY AS TO NATURE OF CONCEIVABLE VIOLATIONS OF COVENANT, OR FROM REASONABLENESS OF OUR EXPECTATION OF A REPLY IN LIGHT OF CTTEES FAILURE TO OBJECT TO OUR APPROACH OVER TWO YEAR PERIOD. IN THIS REGARD MOLLER AND DE AYAS MERELY REITERATED CTTEES IMPRESSION THAT ALL SUBSTANTIVE ISSUES IN QUESTIONS HAD BEEN THOROUGHLY THRASHED OUT IN WRITTEN EXCHANGES OVER PAST YEARS. WE FIRMLY INDICATED THAT WE DID NOT/NOT SHARE THIS PERSPECTIVE, AS EVIDENCED BY CDAS REPEATED REQUESTS FOR CLARIFICATION AND ITS EXPRESS ABSTENTION FROM ADDRESSING ALL SUBSTANTIVE ISSUES RAISED BY LUBICON OVER PAST TWO YEARS. BOTTOM LINE, HOWEVER, IS THAT MAY 5 NOTE CONVEYING CTTEES DECISION QUOTE TO ADOPT A DECISION UNQUOTE IN JULY, COMBINED WITH SECRETARIATS ORAL EXPLANATION OF SIGNIFICANCE OF THIS MESSAGE, HAS GIVEN US EFFECTIVE NOTICE THAT CTTEE SEES NO/NO NEED TO ELAPORATE ON THE NATURE OF THE QUOTE CHARGES UNQUOTE AGAINST CDA.

7. OUR DISCUSSIONS WITH CENTRE THIS WEEK WERE FOCUSSED ON CLARIFYING PROCEDURAL STATE OF AFFAIRS, AND OUR CONTACTS HAVE REMAINED GENERALLY DISCREET RE CTTEES VIEWS ON SUBSTANTIVE ISSUES IN PLAY. MOLLER AND DE ZAYAS HAVE NONETHELESS LEFT US WITH DISTINCT IMPRESSION THAT MAJORITY OF CTTEE MEMBERS ARE INTENT ON ARRIVING AT CONCLUSION ENTAILING SOME

...5

PAGE FIVE YTG#3083 CONF

FINDING THAT CDA HAS BEEN IN VIOLATION OF ITS OBLIGATIONS UNDER ICCPR. NOTWITHSTANDING THE OSTENSIBLY INDEPENDENT, EXPERT, QUASI-JUDICIAL CHARACTER OF THE HUMAN RIGHTS CTTEE, THE MAKE-UP OF THIS BODY IS HIGHLY POLITICAL. IN THIS CONNECTION, MOLLER RUEFULLY NOTED THAT, AS CONSEQUENCE OF INTERNATIONAL INDIGENOUS LOBBY (AND OF STANDARD STEREOTYPES RE COWBOYS AND INDIANS), CDA FACES SAME KIND OF PREJUDICES AND PUBLIC RELATIONS DIFFICULTIES ON INDIGENOUS RIGHTS QUESTIONS AS IT DID/DOES (PARADOXICALLY) ON THE BABY SEALS AND FUR TRADE CONTROVERSIES. CONSEQUENTLY, -IN THE ABSENCE OF AN AGREED SETTLEMENT- IT IS DIFFICULT TO IMAGINE THE CDN GOVT EMERGING COMPLETELY UNSCATHED FROM ANY ULTIMATE CTTEE DECISION ON THE LURICON CASE.

8. MOLLER AND DE ZAYAS WOULD NOT/NOT BE DRAWN ON THE PROSPECTIVE BASIS OF A FINDING AGAINST CDA, BUT LATTER DID HYPOTHEZIZE THAT A BROAD INTERPRETATION OF QUOTE CULTURE UNQUOTE TO INCLUDE NOTION OF TRADITIONAL FISHING AND HUNTING WAY OF LIFE COULD OPEN WAY TO SOME SORT OF FINDING UNDER ART 27 OF COVENANT (DENIAL OF MINORITIES RIGHT TO ENJOY THEIR OWN CULTURE).

9. IN THESE CIRCUMSTANCES, IMMEDIATE ATTENTION MUST BE GIVEN TO QUESTION OF NEED FOR ANY FURTHER WRITTEN SUBMISSIONS TO CTTEE PRIOR TO ITS JULY SESSION IN GENEV. (WORKING GROUP ON COMMUNICATIONS MEETS JULY 3-7 WITH CTTEE PROPER CONVENING JULY 10-28). POSSIBLE OPTIONS RANGE FROM DOING NOTHING (IE EFFECTIVELY RESTING OUR CASE ON OUR SUBMISSIONS TO DATE), THROUGH SUBMITTING A BRIEF MESSAGE REMINDING CTTEE (EITHER

...6

PAGE SIX YTGR3083 CONF

EXPLICITLY OR BY IMPLICATION) OF GOVTS REQUEST FOR REVIEW AND/OR ELABORATION OF ADMISSIBILITY DECISION, TO COVERING IN A BROADER SUBMISSION ALL SUBSTANTIVE ISSUES THAT HAVE BEEN RAISED BY LUPICON AND HAVE NOT/NOT BEEN FULLY ADDRESSED IN OUR EARLIER SUBMISSIONS. 12. IT IS OUR PRELIMINARY SENSE THAT MOST PRUDENT COURSE WOULD BE A SUBMISSION WHICH FORTHRIGHTLY ADDRESSES SITUATION AS IT HAS BEEN PRESENTED AND INTERPRETED TO US BY SECRETARIAT. ELEMENTS OF SUCH A SUBMISSION MIGHT INCLUDE: (A) EXPRESSION OF APPRECIATION OF, AND AGREEMENT WITH, CTTEES APPARENT DESIRE TO CONCLUDE DELIBERATIONS ON THIS LONGSTANDING MATTER ASAP; (B) RECOLLECTION OF ACTUAL PROCEDURAL STATE OF AFFAIRS FROM CDN VIEWPOINT: IE CANADA HAS MADE A SPECIFIC REQUEST FOR REVIEW OF ADMISSIBILITY PURSUANT TO CTTEE RULES OF PROCEDURE AND HAS ALSO POSED CERTAIN ALTOGETHER REASONABLE QUESTIONS WHICH LOGICALLY SHOULD BE ADDRESSED BEFORE FINAL CONSIDERATION OF MERITS IS IN ANY EVENT CONTEMPLATED. CDN POSITION TO THIS EFFECT CLD BE REAFFIRMED, LEAVING CTTEE IN NO/NO DOUBT THAT WE REGARD RESOLUTION OF THESE PARLIAMENTARY QUESTIONS AS THE ONLY APPROPRIATE OBJECT OF ANY DECISION TO BE TAKEN IN JULY; (C) FINALLY, A THOROUGH, ALBEIT CONCISE, REVIEW OF CDN GOVT POSITION ON ALL SPECIFIC ALLEGATIONS OF INFRINGEMENTS OF ICCPR ARTICLES SHOULD BE PLACED ON THE RECORD. TO PRECLUDE CONCLUSION THAT WE ARE THEREBY ABANDONING OUR PRIOR ADMISSIBILITY ARGUMENTS, ISSUES OF ADMISSIBILITY AS WELL AS OF QUOTE SUBSTANCE UNQUOTE COULD BE BROACHED IN ADDRESSING EACH SPECIFIC ICCPR ARTICLE ...7

PAGE SEVEN YTGR3083 CONFD

-MAKING CLEAR THAT WE DO NOT/NOT REGARD ADMISSIBILITY ISSUE AS
RESOLVED.

11.SKILLFUL PACKAGING WOULD OBVIOUSLY BE REQUIRED IN ORDER TO PULL
OFF SUCH AN APPROACH IN AN UNCONTRADICTIONARY MANNER.HOWEVER,THE
APPARENT ALTERNATIVE-OF STANDING SOLELY ON OUR PRIOR ADMISSIBILITY
SUBMISSIONS AND THUS LEAVING SOME LUBICON CHARGES UNADDRESSED-DOES
NOT/NOT STRIKE US AS A VERY PRUDENT OR FORTHRIGHT APPROACH IN LIGHT
OF SCENARIO SECRETARIAT HAS PAINTED FOR US.GOV'T SUBMISSION MIGHT
THEREFORE BE PRESENTED AS AN ATTEMPT TO UPDATE AND CONSOLIDATE ALL
ARGUMENTS ADVANCED TO DATE.INDEED,AT THIS STAGE,GREATEST IMPACT ON
CTTEE WILL LIKELY BE ACHIEVED BY A SUBMISSION THAT IS AT ONCE:(A)
THOROUGH AND AS SELF-CONTAINED AS POSSIBLE(EXISTING DOSSIER OF
SUBMISSIONS AND COUNTER-SUBMISSIONS HAS BECOME SOURCE OF MORE CONFU-
SION THAN ANYTHING ELSE);AND(B)CONCISE AND ATTUNED TO POLITICAL
CHARACTER OF CTTEE AND OF DISPUTE,AS WELL AS TO LEGAL NATURE OF MANY
ISSUES IN PLAY.

12.TIMING IS A CRITICAL AND PRESSING CONSIDERATION.SECRETARIAT HAS
SAID JUNE 15 WOULD BE BEST TARGET DATE TO ENSURE ANY SUBMISSION IS
FULLY PROCESSED FOR JULY SESSION.IT SHOULD BE BORNE IN MIND THAT
SECRETARIAT IS OBLIGED TO COPY ANY GOV'T SUBMISSION TO LUBICON REFS
-AND IT IS NOT/NOT INCONCEIVABLE THAT CTTEE WOULD CONSIDER IT
NECESSARY TO DELAY DECISION ONCE AGAIN IN ORDER TO PERMIT LUBICON TO
RESPOND TO A CREDIBLE GOV'T SUBMISSION.(YOU MAY OR MAY NOT/NOT

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CONSIDER THIS A FORTUITOUS RESULT).ON THE OTHER HAND,THERE IS POSSIBILITY THAT CTTEE COULD REFUSE TO CONSIDER ANY FURTHER GOVT SUBMISSION,INTERPRETING ITS MARCH DECISION AS NOTICE OF INTENTION TO CLOSE THE FILE.HOWEVER,CTTEE COULD HARDLY DO THIS IN GOOD CONSCIENCE CONSIDERING MANNER IN WHICH IT HAS PROCRASTINATED AND DODGED RESPONSIBILITY FOR ANSWERING QUESTIONS WE HAVE RAISED.IN ANY EVENT,SHOULD DECISION BE TAKEN TO MAKE A SUBSTANTIVE SUBMISSION,IT MIGHT BE ADVISABLE FOR MISSION TO SUBMIT IMMEDIATELY A NOTE INDICATING INTENTION TO DO SO IN LIGHT OF GOVT VIEW THAT PROCEDURAL STATE OF AFFAIRS REQUIRES CLARIFICATION AND MANY SUBSTANTIVE ISSUES HAVE NOT/NOT BEEN FULLY ADDRESSED.

13.WE HAVE GONE ON AT SOME LENGTH WITH FOREGOING COMMENTS WHICH REFLECT A RATHER HURRIED ASSESSMENT OF SITUATION.YOU MAY FIND GAPS, UNANSWERED QUESTIONS AND DEBATABLE SUPPOSITIONS,BUT WE HOPE THESE REMARKS WILL AT LEAST ASSIST YOU IN LAUNCHING YOUR OWN DELIBERATIONS WHICH MUST OBVIOUSLY BE UNDERTAKEN WITHOUT DELAY.FINALLY,WHILE WE DO NOT/NOT NORMALLY PARTICIPATE ON EDITORIAL TEAM FOR OPTIONAL PROTOCOL SUBMISSIONS,BELIEVE IT WOULD BE USEFUL AT PRESENT JUNCTURE IF WE COULD CAST EYE OVER ANY DRAFT SUBMISSION WITH VIEW TO ASSESSING QUOTE HOW IT WILL PLAY IN PEORIA UNQUOTE.WE ARE NOT/NOT SANGUINE ABOUT PROSPECTS FOR OVERCOMING CTTEES APPARENT PREDELICCTIONS IN THIS CASE BUT WE SHOULD HOPE AT LEAST TO MAKE IT AS DIFFICULT AS POSSIBLE FOR CTTEE TO PRODUCE A BADLY UNBALANCED OUTCOME.

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LEPROOTT/OACA/CARON/ DE OTT

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--- HUMAN RIGHTS CTTEE: OPTIONAL PROTOCOL COMPLAINT BY LUBICON LAKE

BAND

ATTACHED IS THE QUOTE MORE LENGTHY BRIEFING PAPER UNQUOTE THAT WAS
ATTACHED TO LATEST LUBICON SUBMISSION BUT OMITTED FROM ORIGINAL
SECT NOTE CONVEYING THIS SUBMISSION TO GOVT.

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R. HYNES

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Lubicon Lake Indian Nation
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January 28, 1989

Negotiation of Lubicon land rights between the Lubicon people and the Government of Canada commenced on November 29, 1988, following the dropping of contempt of court charges by Provincial Attorney General Ken Rostad on November 28th. The talks continued until December 22, adjourned for the Christmas holidays, recommenced on January 16 and then collapsed on January 24th. Collapse of the talks was precipitated by "a final take-it-or-leave-it" settlement offer tabled by Federal representatives on January 24th which failed to include such basic elements of an acceptable settlement package as a community hall, a community store, a facility in which to maintain community equipment and conduct essential vocational training, development of reserve lands for agricultural purposes and financial compensation. The following information provides background on these developments. Related correspondence, media reports and other materials are attached. A copy of the Federal Government's final "take-it-or-leave-it" settlement offer is available upon request.

Developments leading directly to negotiations between the Federal Government and the Lubicon people can be traced back to the first part of November, 1988. Faced with the threat of politically significant Lubicon demonstrations along the campaign trail, on November 2nd, 1988, Canadian Prime Minister Brian Mulroney asked for a meeting with Lubicon Chief Bernard Ominayak. The two men met in Edmonton the following evening and Mr. Mulroney agreed to have his Chief of Staff, a man named Derek Burney, "expedite" settlement of Lubicon land rights. Mr. Burney was described as Mr. Mulroney's "top problem solver". It was hoped that the problem which Mr. Mulroney wanted Mr. Burney to solve was the problem of unresolved Lubicon land rights, instead of only the problem of political embarrassment during the Federal election. In retrospect it's clear that Mr. Mulroney had no intention of negotiating an equitable settlement of Lubicon land rights, and that he had something far more sinister in mind than just avoiding politically embarrassing encounters along the campaign trail. It's now clear that Mr. Mulroney's real objective from the very beginning was to use the pretense of serious negotiations as part of a deliberate and concerted effort to try and publicly discredit the Lubicon people, not because of the legal precedent which an equitable Lubicon settlement would establish for other aboriginal people with unrecognized rights--which doesn't concern a Federal Government with no respect for

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the rule of law in any case -- but because of the example the Lubicon people are setting for other aboriginal people in Canada, and also because of the international attention which the Lubicon people are drawing to the problems faced by aboriginal people in Canada.

A week after his meeting with Mr. Mulroney, on November 8th, Chief Ominayak received a phone call from Mr. Burney asking for a meeting between Federal Negotiator Brian Malone and Lubicon representatives "to clear up any misunderstandings about what the Lubicon people are trying to achieve". The Chief agreed to the proposed meeting but also offered to send Mr. Burney materials on the Lubicon position directly, so that Mr. Burney wouldn't be totally dependent upon a not very credible Mr. Malone for information on the Lubicon position. Mr. Burney said that he'd be pleased to receive information on the Lubicon position directly from the Lubicon people. A Lubicon briefing package providing information of all aspects of the Lubicon position-- including compensation and socio-economic development -- was faxed to Mr. Burney the next day.

On November 9th Brian Malone phoned and asked for "a one-on-one" meeting with Lubicon advisor Fred Lennarson to discuss agenda and schedule for Lubicon land negotiations between the Government of Canada and the Lubicon people. Mr. Malone said that he was phoning and asking for the meeting as "the personal representative of Derek Burney". Mr. Malone said that he'd "be reporting back directly to Mr. Burney". (Normally the Lubicon people don't agree to "one-on-one" meetings with representatives of the Federal Government, because representatives of the Federal Government have in the past publicly misrepresented what happened at such meetings to serve their own political purposes. This time, however, Chief Ominayak instructed Mr. Lennarson to agree to a "one-on-one" meeting with Mr. Malone, so as to not in any way impede or adversely affect the possibility of productive negotiations with the Federal Government.)

The meeting between Messrs. Lennarson and Malone to discuss agenda and schedule for Lubicon land negotiations took place on November 10th. Immediately prior to the scheduled meeting Mr. Lennarson asked colleagues with whom he was working to excuse him so that he could meet with Mr. Malone alone, as Mr. Malone had requested. Mr. Malone, however, arrived for the meeting in the company of a Calgary public relations consultant named Ken Colby, whom Mr. Malone had hired earlier to serve as "spokesman" for the Federal Government, because, Mr. Malone said, he didn't want "to degrade or prostitute (his legal) profession by dealing with reporters". In fact Mr. Malone and Mr. McKnight had both been nailed publicly several times for being less than truthful about the Lubicon situation, and so they hired Mr. Colby as a cats-paw

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to mouth their self-serving propaganda and take the resulting public heat. Under these circumstances Mr. Colby's involvement in a meeting which Mr. Malone had specifically requested be "one-on-one" did little to reassure the Lubicon people about Federal Government motivations regarding proposed negotiations.

Mr. Lennarson objected to Mr. Colby attending the meeting, not only because it was clear from previous experience what Mr. Colby does for a living, but because Mr. Malone had specifically requested a "one-on-one" meeting. Mr. Malone reacted to Mr. Lennarson's objection to Mr. Colby attending the meeting by telling Mr. Lennarson that Chief Ominayak insists on the right to decide who the Chief brings to meetings. Mr. Lennarson reminded Mr. Malone that Mr. Malone had specifically requested a "one-on-one" meeting, and he told Mr. Malone that Chief Ominayak had more integrity than to bring other people to a meeting which the Chief had specifically asked be a "one-on-one" meeting.

Ignoring Mr. Lennarson's stated objection to Mr. Colby attending the meeting, Mr. Malone said that he wanted to discuss negotiation agenda and schedule, and that he also "needed" copies of the current Lubicon membership list and self-government paper. Rather than refusing to meet Mr. Malone with Mr. Colby in attendance, and perhaps delaying commencement of hopefully successful negotiations between the Lubicon people and the Government of Canada, Mr. Lennarson decided to proceed with the meeting in spite of this latest evidence of bad faith on the part of the Federal Government. He told Mr. Malone that the Lubicon self-government paper requested by Mr. Malone had been tabled with Federal officials during the Fulton Inquiry. He said that Mr. Fulton had reviewed the Lubicon self-government paper at some length in the Fulton Discussion Paper. He suggested that Mr. Malone read the Fulton Discussion Paper and supporting documentation. He then agreed to provide Mr. Malone with the requested materials and to discuss agenda and schedule for proposed Lubicon land negotiations.

The agenda mutually agreed between Messrs. Lennarson and Malone during their meeting on November 10th was as follows:

- 1.) membership;
- 2.) the possibility of signing an adhesion to Treaty 8;
- 3.) reserve status for the 16 square mile area where the Province will be retaining sub-surface rights;
- 4.) reserve set-up costs including roads; housing; water; sewer; electrification; gasification; communications; a Band office; a school; garbage disposal facilities; community machinery and equipment; a facility to store and maintain community machinery and equipment; a

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health clinic; a combination court house, fire hall, police station and lock-up; a combination old peoples' home and day care facility; a community hall and a recreation centre (indoor ice skating arena);

- 5.) socio-economic development including the clearing and breaking of reserve land for agricultural purposes, fencing, livestock, agricultural equipment and machinery, a large animal veterinary clinic, a slaughter house, a saskatoon berry farm, a wild rice project, a community store, a vocational training centre, development of an on-reserve gravel pit and gravel crushing operation, a portable concrete batch plant, bridge capital to support creation of independent entrepreneurial enterprises and a Trappers' Support Program;
- 6.) funding for on-going programs and services;
- 7.) Lubicon self-government;
- 8.) compensation and costs. (Since the collapse of negotiations on January 24th, Federal officials have been denying that they ever agreed to discuss compensation. Attached correspondence between Chief Ominayak and Derek Burney make clear that financial compensation was an explicitly agreed negotiation item from the very beginning.)

Regarding schedule for the proposed negotiations, Mr. Malone said that he'd be meeting with Provincial Lubicon Negotiator John McCarthy the following Monday. He said that he'd be flying to Ottawa Monday night for meetings with Derek Burney on Tuesday and Wednesday. He said that he had some unspecified "university commitment" on Thursday. He said that he'd be meeting with oil company lawyers on Friday. He said that the following week would be the week of the Federal election, "when nothing much else will be happening". He said that "Burney will be off at the end of December for Washington and (Malone would) like (Burney) to see negotiations through". He said, "I'd like to target the week of November 28th or the following week for 5 full days of intense negotiations". He said, "If we can't get it done in 5 days, then I don't think we'll ever get it done". (For all of Mr. Malone's fast, slick, carnival huckster style patter, it didn't escape the Lubicon people that Mr. Malone's proposed negotiation schedule didn't start until safely after the Federal election.).

On November 18th Mr. Burney wrote Chief Ominayak "to confirm...the federal government's understanding of the agenda for negotiations as agreed to by Mr. Lennarson and Mr. Malone". Mr. Burney's letter projected a schedule for negotiations from November 29th through December 15th, including compensation as an

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agenda item, but failing to mention either socio-economic development or funding of on-going programs and services. Regarding the handling of the media, Mr. Burney wrote:

"If these discussions are to bear fruit, I think it would be useful for both sides to refrain from any media briefings on substance, either before or during the talks...I would therefore propose instead that, once talks begin, public statements should be limited to those agreed to by both sides at the end of each session".

Of course aware that "refraining from any media briefings on substance before the talks" meant that the Lubicon issue would effectively be put on the shelf until after the Federal election, on November 21st Chief Ominayak responded to Mr. Burney's letter of November 18th, agreeing to Mr. Burney's proposed schedule for negotiations, but pointing out that Mr. Burney had failed to include the pre-agreed items of socio-economic development and funding for on-going programs or services. Regarding Mr. Burney's proposed handling of the media during the proposed talks, Chief Ominayak wrote:

"Your proposed arrangements on the handling of the media are acceptable, presuming that Ken Colby isn't involved in the discussions as an official representative of the Federal Government. Mr. Colby's only conceivable role in the discussions is that of a paid professional propagandist in the employ of the Federal Government, and his only conceivable contribution would be to generate contrived and inaccurate stories, rumors and statements which our people will then have to spend time and energy countering. If you want Mr. Colby to attend the discussions, we would propose to open the discussions to the media, so that representatives of the media would be able to independently assess Mr. Colby's continuing disinformation campaign. (underlining added)".

On November 22nd, Mr. Burney responded to Chief Ominayak's letter of November 21st, proposing an amended agenda which still included compensation as a specific agenda item, but now also including both socio-economic development and funding of on-going programs and services. Regarding the Chief's remarks on Mr. Colby and the handling of the media, Mr. Burney wrote:

"As far as our respective delegations are concerned I will leave it to you to determine your team and will reserve myself the same privilege for the federal team...I intend to respect the guidelines proposed in my (November 18th) letter regarding media briefings and would hope that you will do the same."

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Chief Ominayak accepted Mr. Burney's revised agenda for proposed Lubicon negotiations on November 24th. Regarding Mr. Burney's response on the possible involvement of Mr. Colby, Chief Ominayak wrote:

"Your position on the composition of our respective negotiating teams is of course also fine. We'll be constituting our team of people chosen for their ability to make a positive contribution to achieving settlement and presume that you'll be doing the same."

By advising Mr. Burney that the Lubicon team would be selected for their ability to make a positive contribution to achieving settlement, Chief Ominayak was of course telling Mr. Burney, without directly challenging Mr. Burney's obvious right to constitute the Federal negotiating team as Mr. Burney saw fit, that the involvement of Mr. Colby -- a professional propagandist with no credentials relevant to negotiating aboriginal land rights -- would jeopardize the success of negotiations by raising serious questions of bad faith on the part of the Federal Government. For an experienced diplomat like Mr. Burney to then include Mr. Colby as a member of the Federal delegation, as he did, once again suggested that the Federal Government was more interested in using negotiations to seek political advantage than to seek an equitable settlement of Lubicon land rights.

Lubicon land negotiations therefore commenced on November 29th, under a news blackout insisted upon by the Federal Government, but with the Federal Government's very own bought-and-paid for media relations expert in attendance as a supposed member of the Federal negotiating team. During the entire duration of those negotiations Mr. Colby made not one single substantive comment. His sole purpose in attending the negotiating sessions, undoubtedly at considerable expense to the Canadian taxpayer, was so that he would be better able to conduct a pre-conceived Federal propaganda campaign once negotiations collapsed. He had deliberately deceitful press materials describing the collapse in negotiations prepared and ready to be released before Federal officials tabled the final "take-it-or-leave-it" settlement offer which caused negotiations to collapse. He had a deliberately deceitful Federal Government propaganda campaign designed and ready to launch before Federal officials tabled the final "take-it-or-leave-it" settlement offer which caused negotiations to collapse. And, since the collapse of negotiations, he's been busy disseminating the catchy media phrases being used by Federal officials to deliberately distort and discredit Lubicon positions, like calling Lubicon settlement objectives as "a wish list", describing Lubicon settlement motives as "greed not need", and publicly suggesting that Lubicon Chief Ominayak had misrepresented Lubicon settlement goals and "should come clean".

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(The Lubicon people were of course not unaware of the reason Federal officials wanted Mr. Colby to sit-in on the negotiations, as Chief Ominayak made clear in his November 22nd letter to Mr. Burney, but deliberately decided to use proposed negotiations as an opportunity to make as much progress as possible on key issues like membership, which the Lubicon people insisted on discussing as a first item of business, and which Federal representatives were thereby forced to address to some extent if only in order to keep negotiations going long enough to serve their political purposes).

Negotiations during the period from November 29th through December 15th concentrated on land, membership, Lubicon self-government and construction of housing and community facilities. While apparent progress was made in each of these areas during this two week period, final agreement wasn't achieved with regard to any of them, plus other items, like socio-economic development and compensation, weren't discussed at all. It was therefore mutually agreed by the Federal and Lubicon negotiating teams to continue the talks into the following week.

On December 21st Chief Ominayak met with Mr. Burney and Indian Affairs Minister McKnight to review negotiations and plan next steps. At this point a "framework agreement" on Lubicon self-government had been successfully negotiated, but there was still no agreement on land or membership, there was still no agreement on a number of basic community facilities like a community hall, and there had still been no discussion at all on socio-economic development or compensation. Mr. Burney and Mr. McKnight assured the Chief that they'd have the membership problem solved by the following morning. They said that resolution of the land question would have to wait until after Christmas when Provincial Negotiator John McCarthy returned from holidays. Regarding still outstanding community facilities and socio-economic projects, Mr. Burney proposed to involve officials from other Federal Departments to see what they might be able to contribute (only officials from the Federal Department of Indian Affairs had been involved to that point). And on the question of compensation, Mr. Burney raised the possibility of covering all other items in a settlement agreement but asking the courts to settle compensation. Chief Ominayak agreed to continue meetings in January but made clear that compensation would have to be included as an integral part of any final settlement agreement.

The membership problem wasn't solved by the following morning, as promised by Messrs. Burney and McKnight, and negotiation of membership was therefore carried over until after Christmas along with the other items. On December 30th the Chief received a letter from Mr. Burney proposing the following:

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- "1. During the week of January 3, 1989, that Mr. Whitehall and Mr. Lennarson deal with the sundry details of membership by telephone or fax.
- "2. That during the week of January 3 and January 9, 1989, that Mr. Malone deal with surface leaseholder problems, the development of a substitute oil and gas lease (to the satisfaction of Alberta and the Band) and discuss with Alberta their involvement in a socio-economic package.
- "3. Canada, the Band and Alberta establish a team to finalize arrangements to explore ways and means to obtain for the Band a socio-economic package.
- "4. During the week of January 16, 1989 that our negotiators attempt to conclude on behalf of their principals any necessary details dealing with the implementation of the Getty-Ominayak (land) proposal, membership, Alternative Funding Arrangements (for on-going funding of programs and services), reserve construction, hunting and trapping compensation, and the framework agreement on self-government.
- "5. On January 23, negotiators meet to reassess progress and the possibility of signing a final agreement."

Noting that Mr. Burney's letter failed to mention the issue of compensation, Chief Ominayak wrote Mr. Burney back the same day, agreeing to Mr. Burney's proposals for continuing work on land and membership, but reiterating the Lubicon position on compensation and negotiation of socio-economic development. The Chief's letter reads, in part:

"While Mr. Malone might want to talk to (Provincial Negotiator) McCarthy about Provincial Government participation in a socio-economic (compensation) fund as early as January 9th (when Mr. McCarthy returns from holiday), we would want to meet with representatives of the possibly relevant Federal Departments discussed on December 21st before meeting and/or involving their Provincial Government counterparts. Although the Provincial Government does owe compensation for damages and resources extracted from unceded Lubicon land, and although Provincial Government programs and services may ultimately prove to be of some help in meeting our on-reserve socio-economic objectives, on-reserve socio-economic development clearly remains the responsibility of the Federal Government. We would therefore propose to talk to representatives of possibly relevant Federal Departments much as we talked (before Christmas) to representatives of the various programs of the Department of Indian Affairs, about both

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what's possible given their respective program budgets and authorities, and also about ways to meet on-reserve socio-economic development objectives which might fall outside of their normal program budgets and authorities (including, perhaps, Provincial Government participation). The key to making this approach work, of course, as our respective representatives agreed on December 22nd, is that sufficiently senior Departmental people must be given appropriate instructions to the effect that accomplishment of Lubicon on-reserve socio-economic objectives is a priority of the Government of Canada."

Regarding Mr. Burney's suggested timetable for the signing of a final agreement, the Chief's letter reads:

"It should be possible to conclude agreements on land, membership and the Trappers Support Program during the week of January 16th. It should also be possible to conclude "framework" agreements on the related issues of self-government and Alternative Funding Arrangements, where we can jointly subscribe to the implementation of certain pre-agreed principles, although we do not think that a "framework agreement" approach will work equally well in the areas of reserve construction and on-reserve socio-economic development, where all we can really do is agree to the establishment of a defined mechanism for pursuing hopefully productive talks. We therefore believe that the progress we're able to make towards agreements on reserve construction and a socio-economic development package will depend upon meetings with representatives of the possibly relevant Federal Departments we discussed on December 21st, and upon discussions regarding compensation or establishment of a socio-economic development (compensation) fund. (Underlining added)."

Lubicon negotiators returned to Ottawa the evening of January 15th, participated in meetings on the still unresolved membership issue on January 16th and then received a document from Federal officials the evening of January 16th entitled "A Special Development Plan for the Lubicon Lake Indian Band". The Federal Government's "Special Development Plan for the Lubicon Lake Indian Band" was designed as the Federal Government's total response to detailed Lubicon plans in all remaining areas including identified short-falls in community facilities like a community hall, construction of required community commercial enterprises like a community store, and development of reserve lands for agricultural purposes. Basically the Federal Government's "Special Development Plan for the Lubicon Lake Indian Band" consisted of "A \$5 Million Development Fund to be used as seed capital to lever other funding from the private

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sector and on-going government programs". The operative paragraph in the Federal Government's "Special Development Plan for the Lubicon Lake Indian Band" reads as follows:

"The Government has conducted an analysis of 19 projects, already funded by on-going (Federal Government) programs, which are similar to those proposed by the Lubicon Lake Band. Band or individual equity in these projects accounted for 16 percent of total project financing. Based on this experience, a \$5 million development fund, if fully dedicated to economic development, should be able to lever additional amounts potentially in the order of \$26 million in public and private financing."

The following morning Lubicon representatives rejected the Federal Government's "Special Development Plan for the Lubicon Lake Indian Band" as a completely inadequate and unacceptable response to detailed Lubicon proposals for once again achieving social and economic self-sufficiency. They pointed out that the Federal Government's "Special Development Plan for the Lubicon Lake Indian Band" consisted of little more than telling the Lubicon people to apply to normal Federal Government programs, which in most instances they'd already admitted had "no capacity" to respond, and/or to go to the bank and try to borrow the necessary money. <They made clear that any acceptable settlement package would at the very least have to provide the Lubicon people with the basic tools they needed to try and re-build their shattered economy without, on top of everything else, incurring an immense community debt load.> They described the Federal Government's "Special Development Plan for the Lubicon Lake Band" as tantamount to the most blatant form of unbridled colonialism, in which a colonial power deliberately and systematically destroys the institutions and economy of a less powerful people, plunders the valuable natural resources of that less powerful people, replaces the institutions of that less powerful people with a regime of subsistence programs and services designed by the invading colonial power to maintain those less powerful people in a position of continuing dependence and subservience, and then further exploits that less powerful people by loaning them money to buy goods and services from the invading colonial power.

Federal officials responded to Lubicon rejection of their "Special Development Plan for the Lubicon Lake Indian Band" by calling for a break to consider whether or not it would serve any useful purpose to continue with negotiations. Following that break, Federal officials agreed to proceed with meetings involving representatives of other hopefully relevant Federal Departments, supposedly to see what specific items might be covered by such Departments under existing program authorities

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with already allocated funds. Meetings were then held that afternoon and evening with representatives of other possibly relevant Federal Government Departments including the Department of Science, Industry and Technology (DIST), the Department of Regional Industrial Expansion (DRIE), the Department of Agriculture and the Canada Employment and Immigration Commission (CEIC). These meetings proved to be basically information meetings during which representatives of the various indicated federal departments described their programs and services, and representatives of the Lubicon people spelled out and answered

On January 18th Mr. Malone announced that the Federal Government had prepared a revised proposal supposedly dealing with all outstanding matters entitled "Lubicon Lake Band Framework Agreement for Socio-Economic Development". In presenting this so-called "Framework Agreement" Mr. Malone said, "All of my cards are now face-up on the table". He said, "I have nothing left to offer". He said, "That's the full extent of my mandate". The "Framework Agreement" which he then tabled included the 5 million dollar fund offered earlier "to ensure that the Band has ongoing seed capital to lever project funding from public and private sources". It made provision for vocational training programs, but provided no facility in which to conduct essential vocational training. It offered to "seek ministerial approval in principle for (up to 80%) funding (of required community commercial enterprises like a community store)", but made no commitment to fund such enterprises. And it offered to set-up and fund a "joint (Federal-Lubicon) team" to study Lubicon agricultural proposals, but made no commitment to fund Lubicon agricultural proposals.

On January 19th Lubicon negotiators reacted to "the cards" which Mr. Malone had placed "face-up on the table" by telling him that there were cards missing, that he wasn't playing with a full deck. (They pointed out that a number of basic community facilities like a community hall and old peoples home still weren't covered, that there was still no facility in which to conduct essential vocational training, that there was still no commitment to fund required community commercial enterprises like a community store, that there was still no commitment to develop reserve land for agricultural purposes and that compensation still hadn't even been discussed. Until all of these matters had been resolved, they told Mr. Malone, there'd be no settlement agreement.) Mr. Malone then asked Mr. Lennarson the same question which Mr. Burney had asked Chief Ominayak on December 21st about the possibility of settling all other matters but leaving compensation for the courts. Mr. Lennarson told Mr. Malone that the final decision about acceptance of any proposed settlement package would of course have to be made by the Lubicon people, but

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that the Lubicon people had given the Lubicon negotiating team clear instructions that any acceptable settlement package would have to include all of the elements which the Lubicon people had identified as essential to their efforts at trying to re-build their shattered society -- including financial compensation.

Mr. Malone said he'd need to consult with his "principals" before talking further. He said, "Tomorrow's not a Lubicon day" (meaning that he had other commitments). He said that he had to return to Calgary over the week-end and wouldn't be returning to Ottawa until the following Monday. He said that he'd have to consult with his Federal Government colleagues on Monday. He therefore proposed that the next meeting of the two negotiating teams be the following Tuesday, January 24th. He said that he'd have someone phone Mr. Lennarson on Monday about time and place for the proposed Tuesday meeting.

Having heard nothing from Malone and Co. by 5:00pm Monday afternoon, and being concerned that representatives of the Federal Government all seem to disappear about that time of day, Mr. Lennarson phoned Mr. Malone's contact person at the Department of Indian Affairs, a man named Bob Coulter, and asked Mr. Coulter about time and place for the proposed meeting. Mr. Coulter told Mr. Lennarson that a meeting had been scheduled for 10am the following morning. He said that the Provincial negotiating team was in town and wanted to meet with Lubicon representatives first to discuss some "land related matters". He said that the Federal negotiating team would then be arriving about 11am. (This was the first notice that Lubicon negotiators had about a meeting with Provincial negotiators. It was later learned that Mr. Malone had invited the Provincial negotiating team to Ottawa to witness the tabling of the Federal Government's final "take-it-or-leave-it" settlement offer, which Federal officials knew with such certainty would be rejected that they literally had press materials prepared in advance describing that rejection.)

The meeting with Provincial negotiators started at 10:15am. In addition to talking briefly about land related matters, Provincial negotiators asked about how negotiations were going between the Lubicon people and the Federal Government. While Lubicon negotiators of course had no idea what the Federal Government had in store for them later that morning, they briefed Provincial negotiators on negotiations to that point between the Lubicon people and the Federal Government.

Malone and Co. arrived at 11:30am. After making some brief remarks about a proposed community satellite dish and transmitter (the details of which will be provided later), Mr. Malone announced that he'd consulted with his "principals" over the

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week-end and "obtained permission to present a formal, written settlement offer". He said that this "formal, written settlement offer" was based on two principles:

- "1.) That the offer was fair to the Lubicon people, other native people and taxpayers;
- "2.) That the offer provide a land base and equal treatment for the Lubicon people (which he described as 'the Lubicon position')."

Mr. Malone said that the "formal, written settlement offer" which he was tabling had been read by Indian Affairs Minister McKnight and by Stanley Harty (Mr. Burney's replacement as the Prime Minister's Chief of Staff). He said that Mr. McKnight was prepared to recommend the settlement offer to the Federal Cabinet. He said, "I want to emphasize that this is a final, 'take-it-or-leave-it' settlement offer".

Mr. Malone said that the final "take-it-or-leave-it" settlement offer which he was tabling contained "two additions" to what the Federal Government had previously offered. First, he said, the Federal Government was prepared to establish a \$500,000 trust fund, which, invested at the rate of ten percent per year, would generate \$50,000 per year to support the proposed Trappar's Support Program. Second, he said, the offer "contained a guarantee of fairness". He said that the Federal Government "can see no grounds for compensation". "However", he said, "in order to guarantee fairness, we're prepared to proceed with all aspects of settlement without prejudice to the legal rights of the Band (to sue for compensation), as long as it's understood that the things provided (in the settlement agreement) will be offset against any award by the court".

Mr. Malone said that the team would "agree to proceed" (to work out the details of the "final, 'take-it-or-leave-it' settlement offer") and maintain the news blackout, or, (he said), if we can't agree at the technical level, we can report back to our principals for instruction as to whether or not to continue the news blackout".

Mr. Lennarson told Mr. Malone that the Lubicon negotiating team would have to review the Federal Government's final "take-it-or-leave-it" settlement offer and consult with the people in Little Buffalo Lake before responding. It was therefore agreed to adjourn until 3:00pm that afternoon.

After arranging to fax a copy of the Federal Government's final "take-it-or-leave-it" settlement offer to Chief Ominayak in Little Buffalo Lake, and to Lubicon lawyer James O'Reilly in Montreal, Lubicon negotiators reviewed the offer and consulted by

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phone with both Mr. O'Reilly and with the people in Little Buffalo Lake. A review of the Federal Government's final "take-it-or-leave-it" settlement offer made clear that the offer still didn't cover a number of basic community facilities like a community hall and old people's home, still made no provision for a facility to conduct essential vocational training; still made no commitment to fund required community commercial enterprises like a community store, and still made no commitment to develop reserve lands for agricultural purposes. As indicated by Mr. Malone in his introductory remarks, a \$500,000 trust fund for the proposed Trapper's Support Program had been added to earlier Federal offers, but, contrary to what Mr. Malone said when he presented the Federal Government's final "take-it-or-leave-it" settlement offer, the offer wasn't without prejudice to Lubicon rights to seek compensation through the courts, but rather contained a full and final release of all Lubicon legal rights reading, in part:

"8.7 In consideration of the rights and benefits provided by this Offer, the Band and such persons who are entitled to adhere to Treaty No. 8, through the Chief and Council of the Band:

- (a) will cede, release and surrender to Her Majesty in Right of Canada
 - (i) all their aboriginal claims, rights, titles and interest, if any, in and to lands and waters anywhere within Canada, and
 - (ii) all their claims, rights or causes of (legal) action whether collective or individual which they ever had, now have, or may hereafter have under, or arising out of or by reason of Treaty 8, save as hereafter specifically provided;
 - (iii) all their claims, rights or causes of (legal) action whether collective or individual which they ever had or now have as alleged in (legal actions filed by the Lubicon people);
 - (iv) all their claims, rights or causes of (legal) action which they ever had, now have or may hereafter have under, or arising out of or by reason of any Imperial or Canadian legislation or Order-in-Council or other action of the Governor-in-Council or Canada in relation to Metis or half-breed scrip or money for scrip;
- (b) will agree, on their behalf, and on behalf of their heirs, descendants and successors not to assert any cause of (legal) action, action for a declaration, claim or demand of whatever kind of nature which they ever had, now have or may

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hereafter have against Her Majesty in Right of Canada or any province, the government of any territory or any person based on any claim, right, title or interest described in (a)."

Asked by reporters about the obvious contradiction between the full and final release contained in the Federal Government's final "take-it-or-leave-it" settlement offer, and his claims that the offer was made without prejudice to Lubicon rights to go to court and sue for compensation, Mr. Colby has been telling reporters that Mr. Malone proposed to re-write this section of the offer but Mr. Lennarson rejected that offer. Mr. Colby's a liar. Although Chief Ominayak and Mr. Lennarson had both earlier rejected verbal proposals to settle other issues but refer the question of compensation to the courts, Mr. Malone made no offer to re-write any section of the Federal Government's final "take-it-or-leave-it" settlement offer. On the contrary, Mr. Malone made clear that the content of the Federal Government's final "take-it-or-leave-it" settlement offer was not open for discussion. Moreover, and specifically regarding verbal remarks which Mr. Malone did make when he presented the Federal Government's final "take-it-or-leave-it" settlement offer, section 8.14 of that so-called offer speaks directly to the value of statements not expressly included in the written offer. Section 8.14 of the Federal Government's final "take-it-or-leave-it" settlement offer reads as follows:

"8.14 This written Offer is the entire offer and there is no representation, warranty, collateral agreement or condition affecting this offer, except as expressed herein."

Given the clear-cut and easily understandable content of the Federal Government's final "take-it-or-leave-it" settlement offer, and the demonstrable fact that this offer made no commitments in areas absolutely essential for the Lubicon people to once again become socially and economically self-sufficient, Lubicon negotiators were instructed to reject the offer. As a result, when the meeting reconvened at 3pm, Mr. Lennarson told Mr. Malone that the Federal Government's final "take-it-or-leave-it" offer was unacceptable. Since Mr. Malone had presented the Federal Government's so-called offer as "a final 'take-it-or-leave-it' offer", Mr. Lennarson said, the Lubicon people had no choice but to conclude that negotiations were at an end without having resolved the long-standing jurisdictional dispute between the Lubicon people and the Government of Canada. Consequently, Mr. Lennarson said, the Lubicon people would be taking whatever action was required to defend themselves and their vital interests on the ground. Regarding the news blackout insisted upon by the Federal Government at the commencement of

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negotiations, Mr. Lennarson said, that news blackout was now lifted -- effective immediately.

Mr. Malone responded to Mr. Lennarson's remarks by saying "Perhaps you can tell me, and perhaps you can tell (Provincial Negotiator) Mr. McCarthy (whom Mr. Malone had arranged to have in attendance for the presentation of a 'take-it-or-leave-it' offer which Mr. Malone knew in advance would be rejected), what the Lubicon people want". Mr. Malone said, "We've been talking for 6 weeks and we still don't know what you want".

Mr. Lennarson told Mr. Malone that the Lubicon people had spelled out their position on the issues repeatedly and in detail and that Mr. Malone knew it. He said that he couldn't imagine why Mr. Malone would make such demonstrably untrue remarks except perhaps for the benefit of the Provincial negotiating team whom Mr. Malone had arranged to have present for this obviously scripted little drama.

Mr. Malone said, "Tell me and tell (Provincial Negotiator) McCarthy what your bottom line is on compensation." He said, "We've been talking for 6 weeks and you still haven't stated your position of compensation".

Mr. Lennarson told Mr. Malone that the Lubicon people had tabled a detailed position on compensation with the Federal Government as long ago as 1985 during the Fulton Inquiry. Mr. Lennarson pointed out to Mr. Malone that the Lubicon people had been ready all along to negotiate compensation but that Federal officials had bobbed and weaved and deliberately avoided discussing compensation. Mr. Lennarson said the Lubicon people remained willing to discuss compensation but had no intention on tabling a "bottom line" figure on compensation without benefit of any discussions or negotiations, because, he said, such an approach would immediately transform that so-called "bottom line" into the starting point for compensation negotiations. Similarly, Mr. Lennarson said, the Lubicon people had tabled a position on compensation with the Alberta Government as long ago as October 14, 1988, which Provincial officials had also avoided discussing.

Mr. McCarthy said that the Provincial Government was "prepared to participate in compensation in a secondary role but want to hear what the Federal Government is prepared to do before making any commitments." He said that he wanted to go on record as disagreeing with Mr. Lennarson's comment that there've been no discussions on compensation with the Province.

Mr. Lennarson repeated that there'd been no substantive discussion of compensation with either level of Canadian Government. All that had happened, he said, was that the Lubicon

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people had tabled positions on compensation with both levels of Canadian Government which neither level of Canadian Government had been prepared to discuss.

Mr. Malone repeated that the Federal Government didn't think the Lubicon people had any compensation coming, but, he said, "in order to guarantee fairness", the Federal Government's final "take-it-or-leave-it" offer was without prejudice to Lubicon rights to go to court and sue for compensation.

Mr. Lennarson said that Mr. Malone's approach to settlement of Lubicon land rights was reminiscent of the approach the Federal Government used to negotiate Treaty 8 in 1899. In both cases, Mr. Lennarson said, representatives of the Federal Government made statements which were not reflected in the operative documents. Moreover, Mr. Lennarson said, if the Federal Government was really serious about "guaranteeing fairness", then the question of Lubicon compensation shouldn't be argued before courts established by the Canadian Government, before judges appointed by the Canadian Government and within the context of a body of law created by the Canadian Government, but should rather be argued before courts established by the Lubicon people, before judges appointed by the Lubicon people and within the context of a body of law created by the Lubicon people -- or, Mr. Lennarson said, at the very least the question of compensation owing to the Lubicon people should be argued before the kind of independent three judge tribunal proposed last year by Alberta Premier Getty, where one of the judges was appointed by the Federal Government, one of the judges was appointed by the Lubicon people and the third judge was appointed by the first two.

Mr. Malone repeated that the Federal Government's offer was final and wouldn't be changed.

Mr. Lennarson repeated that the Federal Government's final offer was unacceptable.

Mr. McCarthy asked if the end of negotiations between the Lubicon people and the Federal Government meant an end to negotiations between the Lubicon people and the Provincial Government as well.

Mr. Lennarson told Mr. McCarthy that the Lubicon people were prepared to keep negotiating with the Province as long as useful work was being accomplished and progress being made. Mr. Lennarson and Mr. McCarthy then agreed to be in touch by phone regarding the scheduling of further negotiating sessions between the Lubicon people and the Provincial Government, after which the meeting ended.

By the time the Lubicon negotiating team had checked out of their

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Hotel and taken a cab to the airport, Mr. Colby had issued pre-prepared statements to the press including a highly misleading two page press release describing the Federal Government's version of the collapse of negotiations, a highly misleading one page summary of the Federal Government's final "take-it-or-leave-it" settlement offer, and a highly misleading four page Ministerial statement on the offer and the collapse of negotiations. Each of these three pieces of clearly deliberate misinformation give Mr. Colby's name as the person to contact regarding questions. Immediately following release of these three pre-prepared statements, Mr. Colby started calling reporters around the country, feeding them the Federal Government's artfully crafted propaganda line on the collapse of negotiations, arranging for and granting interviews, asking for and holding meetings with editorial boards, arranging to appear on telephone talk shows and calling press conferences for himself in places like the Alberta Provincial Legislature. Within a couple of days the Federal Government's basic three piece misinformation package on the collapse of negotiations was being mailed out to people across Canada and Europe who'd in the past written to the Federal Government asking about the Lubicon situation. It doesn't take much imagination to realize how much preparatory work was required prior to the collapse of negotiations to mount such a propaganda campaign, nor, in light of this history, does it take much imagination to appreciate the purpose Federal officials had in mind all along for the negotiations.

On the specific issues involved in the negotiations, the situation is as follows:

MEMBERSHIP

As part of their propaganda campaign representatives of the Federal Government are saying that "The Lubicons claimed membership was important but that money wasn't". They're saying, "We solved membership but the Lubicons are now refusing to settle because of money". They're of course saying these things to try and create the impression that the Lubicon people are really only interested in money and have been less than forthcoming with the public about their true position. In fact the Lubicon people never said that membership was important but that money wasn't. Money is clearly going to be important if the Lubicon people are to successfully make the difficult and expensive transition from a traditional hunting and trapping economy to a hopefully viable mixed economy. Rather what the Lubicon people said was that money was negotiable but membership wasn't. Moreover, contrary to deliberately deceptive public statements by representatives of

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the Federal Government, membership isn't settled.

On November 29th, the first day of negotiations, Federal officials said that they'd determined all of the people on the Lubicon membership list were entitled to adhere to treaty, which would provide treaty rights like hunting, and that the vast majority of those entitled to adhere to treaty were also entitled to be registered as Indians under the Indian Act, which would provide so-called statutory benefits like educational assistance and health benefits. They said that they'd only identified 5 people who couldn't be registered as Indians under the Indian Act and another 34 about whom they had genealogical questions. A meeting was therefore arranged for the following morning between Federal and Lubicon genealogical research people to review the 5 and answer genealogical questions about the 34. That meeting answered the questions about the 34 and determined that the 5 could also be registered as Indians under the Indian Act, although another 5 people were later identified who couldn't be registered.

The afternoon of November 30th negotiators for both sides met again to discuss the membership question. After hearing a report on the conclusions of the morning meeting between Federal and Lubicon genealogical research people, senior Federal Justice Department lawyer Ivan Whitehall proposed a short-cut to resolution of the membership issue. Mr. Whitehall said that all of the people on the Lubicon membership list were entitled to adhere to treaty, that everybody who adhered to treaty thereby became a treaty Indian, and that all treaty Indians are legally entitled to be registered as Indians under the Indian Act. The Lubicon negotiating team accepted Mr. Whitehall's proposed method of resolving the membership issue, pointing out that Mr. Whitehall was in fact only proposing to use the same approach employed historically in negotiating treaties and/or adhesions to treaties.

A couple of days later the Lubicon delegation was advised that the Registrar of Indian Affairs had additional genealogical questions, and a couple of days later the Registrar had still more genealogical questions, and a couple of days later the Registrar had still more genealogical questions. While no other aboriginal people negotiating a treaty or adhesion to treaty with the Government of Canada had ever been subjected to such genealogical scrutiny, the Lubicon people decided to provide the requested genealogical information in order to hopefully resolve the membership issue once and for all.

The second week of December the Lubicon delegation was advised that the Registrar now required full documentation and/or sworn affidavits attesting to the veracity of the genealogical

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information provided during the previous week. While such evidence had never before been required of any other aboriginal people negotiating a treaty or adhesion to treaty with the Government of Canada, the Lubicon people agreed to provide the requested documentation and/or sworn affidavits in order to hopefully resolve the membership issue once and for all. The Lubicon negotiating team therefore asked the Registrar to spell out in writing which documents and/or affidavits he required for which individuals. This request was reiterated several times over the next couple of weeks without result.

On December 21st Chief Ominayak met with Prime Ministerial Chief of Staff Burney and Indian Affairs Minister McKnight to review the negotiations and consider next steps. Mr. Burney said that he understood the membership issue had been solved. The Chief told Mr. Burney that Mr. Burney was mistaken. The Chief said that there'd been an agreement on November 30th that all of the Lubicon people were entitled to adhere to treaty, and that all of the Lubicon people who adhered to treaty would then be legally entitled to be registered as Indians under the Indian Act, but, the Chief said, the Registrar was not prepared to provide written assurances that all of the Lubicon people could be registered until he'd been provided with documentation supporting his "current understanding and interpretation of Lubicon genealogies". The Chief said that the Lubicon people were prepared to provide such documentation, although no other aboriginal people negotiating a treaty or adhesion to treaty with the Government of Canada had ever before been required to do so, in order to resolve the membership issue once and for all. However, the Chief said, the Lubicon negotiating team had asked several times for specifics regarding supposedly required documentation, which had in turn been committed several times, but that as yet nothing had been provided. As for settling the membership issue, the Chief said, the issue wouldn't be settled until the Federal Government was prepared to make a firm commitment in writing that all of the Lubicon people were entitled to participate in a settlement agreement.

Mr. McKnight said that his legal advice was that everybody was entitled to adhere, and that everybody who adhered was entitled to be registered. He promised that he'd have a letter to that effect for the Chief from the Registrar by 10am the following morning. Mr. McKnight's promise was echoed by Mr. Burney, who also assured the Chief that the Chief would have such a letter from the Registrar by 10am the following morning. At 11am the following morning Justice Department lawyer Ivan Whitehall gave Lubicon negotiator Fred Lennarson a copy of a letter addressed to Mr. Whitehall from the Registrar reading as follows:

"Pursuant to our telephone conversation this morning, I can

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confirm that, based on the genealogical charts 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 (from the Joint Genealogy Study and the Alberta Provincial Department of Vital Statistics) 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" (underlining added).

On January 5, 1989, Mr. Lennarson received a faxed communication from the Registrar consisting of a cover letter and a 66 page attachment entitled "Further Documentation Required". The attachment identifies supposed documentation requirements for 181 Lubicon Indians. The cover letter reads:

"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...If you require any additional information or assistance please let me know" (underlining added).

On January 6th Mr. Lennarson talked to Mr. Whitehall about the faxed communication from the Registrar. Mr. Lennarson told Mr. Whitehall that he was surprised at the length of the list of people being questioned, especially in light of the fact that there'd been fewer than 40 people being questioned when negotiations commenced on November 30th. Mr. Lennarson also told Mr. Whitehall of the growing frustration on the Lubicon side of the table over inability to close on the membership issue, especially in light of the agreement with Mr. Whitehall on November 30th that everybody who adhered was entitled to be registered, and the commitment on December 21st from Messrs. Burney and McKnight that everybody who adhered was entitled to be registered. Mr. Whitehall responded to Mr. Lennarson's expression of frustration by saying, "Unfortunately neither Burney nor McKnight have the statutory authority to register people".

Currently all available birth registrations have supposedly been collected by Federal and Provincial officials, and affidavits

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covering all of the 181 people identified in the Registrar's January 5th fax to Mr. Lennarson have been prepared by the Lubicon people. Whether this evidence will satisfy the Registrar is not known. What is known, contrary to deliberately deceptive public statements being made by representatives of the Federal Government, is that the membership issue isn't settled and won't be settled until the Lubicon people have written assurances from the Federal Government that all of the Lubicon people are included in any settlement of Lubicon land rights.

LAND

Using the same propaganda line as they're using with membership, representatives of the Federal Government are saying that "the Lubicons claimed that land was important but that money wasn't". They're saying, "We solved land but the Lubicons are now refusing to settle because of money". In fact the Lubicons never said that land was important but money wasn't. Rather the Lubicon people said money was negotiable but that land wasn't. Moreover, contrary to deliberately deceptive public statements being made by representatives of the Federal Government, land isn't settled either.

The Grimshaw Agreement negotiated between Chief Ominayak and Premier Getty provided, among other things, that the Province will transfer 79 square miles with full surface and sub-surface rights plus another 16 square miles with surface rights only; that the Lubicon people will select the involved lands; that, at least to the Chief's knowledge, the involved lands didn't include any currently producing gas or oil wells; that the Province of Alberta will retain access rights to the shores and bed of Lubicon Lake; and that the Federal Government will be responsible for buying out of all third party interests involved with the lands in question. It is with regard to these provisions of the Grimshaw Agreement that significant problems remain; specifically, the question of mutually acceptable Provincial Government access to the Lake is still unresolved; it's now known that there are three producing oil wells within the 95 square mile area and there's no agreement on how these three wells should be handled; as a result of the unresolved access question and the problem posed by the three producing oil wells, the final boundaries of the 16 and 79 square mile areas are still not agreed; and there's still no agreement as to how third party interests are to be cleared.

HOUSING AND COMMUNITY FACILITIES

Federal officials proposed to first arrange meetings with

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representatives of the Department of Indian Affairs to see what items could be covered under existing Federal Government programs with already allocated program monies. Recognizing both the well-known inadequacies of existing Federal Government programs, and the fact that existing Federal Government programs were never intended to support the creation of a complete new community, it was clear from the very beginning that existing Federal Government programs would not be able to meet all Lubicon requirements with already allocated program monies. Rather the intent of meetings with people from existing Federal Government programs was to see what they could and couldn't cover with already allocated funds, thereby identifying so-called "short-falls" -- things which couldn't be covered out of existing program allocations and would therefore have to be handled by special allocations. This approach was explicitly discussed and agreed in advance by the Federal and Lubicon negotiating teams.

Initial Lubicon estimates for housing and community facilities totalled 52 million dollars, all real numbers for real items like housing and electric power. The initial response of Federal program officials was that they could only cover items totalling about 20 million under existing program authorities with existing budget allocations. After a couple of weeks of tough negotiation, Federal program officials -- by using maximum calculations and adding things like risk, contingency and inflation factors -- had figured out ways to squeeze some 34 million dollars out of existing program allocations, and Lubicon negotiators -- through re-design, recalculation of costs and the dropping of items -- had managed to shave the cost of Lubicon requirements from 52 million to 41 million -- leaving an identified "short-fall" of about 7 million. Mr. Colby describes this complicated two way process as a simple one way street, inaccurately saying that "the cost of houses and other facilities is estimated by the band and the government (underlining added) to be 23 million, but, (he says), after including vastly inflated costs for contingencies, the feds are offering 34 million...(and)...the band gets to use any of the extra 11 million that's left over to build whatever it wants -- such as a pool." In fact neither side tried to argue that "the cost of houses and other facilities" was 23 million. Twenty three million was rather the base amount which Federal program officials said could be contributed from existing program budgets towards the construction of housing and other items estimated to cost at least 41 million. And the difference between the 23 million and the 34 million was not money made available to the Lubicon people to build whatever they pleased, but was rather money over and above the base amount of 23 million which Federal officials were able to squeeze out of existing program budgets toward the construction of specified items, the legitimacy of which was not questioned, but which were simply beyond the

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capability of normal program authorities and budgets.

Ever with an eye to the catchy media phrase, and clearly more concerned with creating certain prescribed illusions than with telling the truth, Mr. Colby describes this fanciful notion that the Feds were offering some 11 million over and above the cost of supposedly legitimate items as "a keep-the-change approach", and, he tells reporters, Federal officials jokingly call the proposed Rubicon reserve "a keep-the-change reserve". Under the circumstances that's like someone who owes you twenty dollars giving you ten dollars and telling you to keep the change.

Specifically items covered by the 34 million are roads, water, sewer, electrification, houses, a school, accommodation for teachers and clearing of land for housing and community facilities. Items which may or may not be covered by the 34 million are a Band office (where funding is dependent upon a new policy "presently under consideration"); a health unit (where "Preliminary information indicates that National Health and Welfare may fund \$350,000"); and school buses which Federal officials claim, without supporting documentation which they've repeatedly committed but never provided, can be financed by private individuals with bank loans based on bussing contracts let with money provided in the normal school operating budget under "transportation costs".

Items partially covered by the 34 million but which in fact aren't possible with only partial funding are a construction site camp necessary to manage reserve construction; a natural gas utility for heating of homes and community facilities; a community hall; a combination fire hall, police station, court house and lock-up; an incinerator for disposal of community refuse; a combination community maintenance shop, construction facility and vocational training centre; and a variety of necessary community maintenance equipment (where a garbage truck, road grader and back hoe are committed, but where there are still outstanding requirements for a couple of D-7 cats for on-reserve road maintenance, a couple of gravel trucks for on-reserve road maintenance and community construction, a couple of snow plows (which attach to the gravel trucks for snow removal from on-reserve roads), a power generator to provide electric power to on-reserve construction sites and a freight tractor and trailer to transport community maintenance equipment and agricultural equipment).

Items not covered at all by the 34 million are a combination old peoples home and day care centre, a storage shed for community maintenance equipment, an indoor ice arena and a community satellite dish with transmitter.

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The difference between the 41 million required and the 34 million offered is to be found in the difference between items covered and items not covered or only partially covered.

SOCIO-ECONOMIC DEVELOPMENT

Lubicon plans for once again achieving economic self-sufficiency rest on four main pillars, none of which are provided by the Federal Government's "take-it-or-leave-it" final settlement offer. Those four main pillars are listed below, followed by a description and the Federal Government's reaction to each:

- I.) Combination vocational training, community maintenance and community construction;
- II.) Combination commercial enterprises, community facilities and community services;
- III.) Development of reserve lands for agricultural purposes;
- IV.) Financial compensation and the establishment of a capital fund to produce interest revenues in perpetuity for use by the Lubicon people as a society.

I.) Vocational Training, Community Maintenance and Community Construction

The Lubicon people propose the construction of a combination vocational training centre, community maintenance shop and community construction facility. The purpose of this facility would be to maintain community improvement and agricultural equipment like road graders and tractors; to pre-fabricate elements of the construction program like housing roof trusses (especially during the winter months); to provide accredited vocational training for Lubicon adults in such areas as heavy equipment maintenance, welding, carpentry, plumbing and electrics (while at the same time maintaining community equipment and pre-fabricating elements of the community construction program); and to provide secondary school students with accredited vocational training in such areas as heavy equipment maintenance, welding, carpentry, plumbing and electrics (while at the same time maintaining community equipment and pre-fabricating elements of the community construction program). The dimensions and cost of this proposed facility are based on standards and information provided by Provincial Government officials with experience operating similar facilities. The Federal Government says that it'll provide money for vocational training but not for a building in which to conduct the vocational training. Originally Federal Government officials said, as they are now saying with regard to construction of the proposed old peoples home and day

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care centre, that the Federal Government simply has "no capacity" to fund the construction of such a facility. More recently, however, since the collapse of the negotiations, the ever creative Mr. Colby has been saying that the Federal Government refused to fund construction of a vocational training centre because the size of the Lubicon population doesn't justify such a facility, and because, he says, there's no reason to believe that anybody else would want to attend it. Money for vocational training without money to build the facility means that the Lubicon people would have to take vocational training courses at Provincial Government vocational training institutions in places like Edmonton, presumably while outsiders built and operated their new reserve. Experience with people from northern native communities taking vocational training courses at Provincial Government institutions in places like Edmonton is terrible, with a near-100 per cent drop-out rate. In any case the Lubicon people still require, and still don't have, a facility adequate to maintain community equipment and pre-fabricate elements of the housing program during the winter months.

II.) Community Commercial Enterprises, Community Facilities and Community Services

The Lubicon people propose the construction of a community store including a butcher shop, grocery, dry goods, hardware and gas station. The nearest comparable commercial centre is 70 miles away. Prior to the onset of development activity the Lubicon people lived off the land and didn't need such a store; now the game is gone and they do need it. This community store is therefore seen as not only a community commercial enterprise but also as a basic community facility and community service. Under these circumstances, as well as the fact of being located in the middle of thousands of square miles of intense development activity involving hundreds of development company workers, the economic viability of this store is assured.

The Lubicon people also propose the construction of a combination eight unit motel and coin-operated laundry. The rationale for the motel is that the nearest accommodation -- other than in peoples' homes -- is 70 miles away. The nearest coin-laundry is also 70 miles away. There is therefore a need and a market for a small coin-laundry, and there's also a need for a place where outsiders related to reserve development can stay, as well as for a place where quests of people in the community can stay. In addition, related to gas and oil development activity in the surrounding area, there's a need for accommodation in the area far greater than can be met by such a modest facility, assuring economic viability.

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Traditional Lubicon lands which the Lubicon people intend to retain for reserve purposes are known to contain sizable gravel deposits, where the Lubicon people propose to develop an on-reserve gravel pit and gravel crushing operation. The reason the Lubicon people want to develop these gravel deposits is that they'll have a continuing need for gravel to build and maintain on-reserve roads, and also to support the community construction program. In addition there's a continuing need on the part of development companies in the surrounding area for gravel to build and maintain roads and support construction projects, assuring economic viability. If on-reserve gravel deposits aren't developed, the Lubicon people will simply require money to purchase gravel from others, instead of working to develop a hopefully self-sufficient Lubicon economy.

The Lubicon people propose to purchase a portable concrete batch plant, both to support the community construction program and also to take advantage of the market in the surrounding area for items like concrete swamp and river weights, concrete drilling pads and redi-mix concrete. As in the case of the proposed gravel pit and gravel crushing operation, the extensive market for concrete and concrete products in the surrounding area assures economic viability. And also as in the case of the gravel pit and gravel crushing operation, if the Lubicon people don't have the capability to produce their own concrete, they'll need money to buy it from someone else, instead of working to develop a hopefully self-sufficient Lubicon economy.

Lubicon cost estimates for the community store, motel with coin-laundry, gravel pit, gravel crushing operation and concrete batch plant total four million dollars. Mr. Colby tells reporters that the Federal Government's final "take-it-or-leave-it" settlement offer includes four million dollars to cover these projects. In fact the Federal Government's final "take-it-or-leave-it" settlement offer makes no commitment to fund these projects. Rather the Federal Government's final "take-it-or-leave-it" offer regarding these projects reads as follows:

"4. Business Development Projects

"4.1 The (Federal) Department of Industry, Science and Technology (DIST) will seek ministerial approval in principle (underlining added) for funding from the Native Economic Development Program (NEDP) up to a maximum of (80 percent or) \$4 million for the following projects, provided that they meet normal program requirements (underlining added):

- a) commercial centre
- b) coin laundry and guest accommodation
- c) development of a gravel pit/crushing operation
- d) purchase of a portable, concrete batch plant

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"4.2 DIST will provide the necessary funds to develop business plans for the four projects noted in 4.1. These funds will be part of the \$4 million cap identified in 4.1.

"4.3 DIAND will undertake to have done by June 30, 1989 an assessment of the quantity and quality of the Band's sand and gravel deposits and the appropriate configuration of equipment, said assessment to cost no more than \$50,000."

III.) Development of Reserve Lands for Agricultural Purposes

The single most important element of Lubicon plans to once again become economically self-sufficient is development of reserve lands for agricultural purposes. The importance of this element goes beyond simple economics to the basic relationship of the Lubicon people to their traditional lands. Unlike the development companies who see the land as something to be conquered, exploited and then left, the Lubicon people see the land as something which, properly cared for, will not only support you but also your children and grandchildren. Faced with destruction of their traditional hunting and trapping economy by large scale development activity, the Lubicon people hope, through development of reserve lands for agricultural purposes, to be able to replace the wild plants and animals upon which they've historically depended with a combination of plants and animals which they can raise and/or manage on that small part of their traditional lands over which they will be retaining control.

Key to Lubicon agricultural plans is the clearing of reserve lands for agricultural purposes and the development of a cow/calf herd. The Lubicon people have consulted extensively with people who operate large cow/calf herds in northern Alberta and have developed detailed proposals which include the cultivation of grain and forage crops, the construction of a large animal veterinary clinic, the construction of a slaughter house and the irrigation of selected reserve lands. In addition they've developed proposals for smaller scale agricultural enterprises with demonstrated potential like a saskatoon berry farm and the cultivation of wild rice.

The total estimated cost of developing reserve lands for agricultural purposes is 16 million dollars. The only criticism which Federal Agricultural officials had of Lubicon agricultural proposals was that they thought the Lubicon people should phase agricultural development over an eight year period of time, instead of a five year period of time -- which the Lubicon people agreed to do. The Federal Government's final "take-it-or-leave-

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it" settlement offer regarding Lubicon agricultural development proposals is as follows:

"5. Agriculture

"5.1 Canada proposes to develop jointly with the Band by June 30, 1989, a phased plan for an agricultural venture.

"5.2 Federal Members of the joint team will come from the Department of Indian Affairs and Northern Development (DIAND), the Native Economic Development Program (NEDP), the Canada Employment and Immigration Commission (CEIC), Agriculture Canada, and the Western Diversification Office (WDO).

"5.3 Aspects that the joint team will examine include:
(underlining added)

- . the potential development of a cow/calf operation
(underlining added)
- . the clearing of land
- . the definition of suitable crops
- . productive capacity of the band (to manage the proposed projects)
- . environmental impacts

"5.4 Canada will make available up to \$100,000 for this study

"5.5 Agriculture Canada will make available all existing services to such a venture, once established

"5.6 Any commercially viable business which incorporates existing agricultural activities on the reserve to be established, and which is based on the phased plan referred to in 5.1 will be eligible for consideration for funding (underlining added) by NEDP of up to 80% of project costs."

In other words there's absolutely no commitment in the Federal Government's final "take-it-or-leave-it" settlement offer to provide funds for any of the proposed Lubicon agricultural development projects -- only what amounts to a counter proposal from the Federal Government to establish and fund a joint committee to "examine" Lubicon agricultural proposals.

IV.) Financial Compensation and the Establishment of a Capital Fund to Produce Interest Revenues in Perpetuity for Use by the Lubicon People as a Society

Another key element in Lubicon plans to achieve social and economic self-sufficiency is the establishment of a capital fund to produce interest revenues in perpetuity for the Lubicon people. These interest revenues would give the Lubicon people financial capability independent of either level of Canadian Government to undertake community projects and help their members

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establish for-profit entrepreneurial enterprises. The alternative, understandably unacceptable to the Lubicon people, is to be forever dependent upon an endless succession of ever-changing, demonstrably inadequate, typically underfunded and consistently disastrous Government programs for the resources which they will require in the future to do the things which they will need to do.

Every modern aboriginal land rights settlement has consisted of a package of rights and benefits which included land, housing, community infrastructure, community facilities, provision for socio-economic development, and, as a separate and distinct item, substantial financial compensation. The Alaska settlement, for example, provided nearly a billion dollars in compensation; the James Bay settlement provided 225 million; the NWT Agreement-In-Principle provides 500 million and the recent Yukon Agreement-In-Principle provides 257 million. It has always been the intention of the Lubicon people to use such compensation monies obtained through negotiation of their aboriginal land rights to create the capital fund mentioned above. Since equal treatment has also always been a key element in the Lubicon position on settlement, and since all of these other modern aboriginal settlements contained financial compensation as a separate and distinct item, it's unlikely that the Lubicon people would ever have agreed to negotiations with the Federal Government, or to effectively giving Prime Minister Mulroney a pass on the Lubicon issue during the recent Federal election, had the Federal Government refused from the very beginning to even discuss compensation (as Federal representatives now claim, contrary to the enclosed correspondence between Chief Ominayak and Prime Ministerial Chief of Staff Burney).

In their effort to create the dual illusions of a reasonable Federal Government and unreasonable Lubicon people, representatives of the Federal Government have said a number of different and at times contradictory things about the issue of compensation. Immediately following the collapse of negotiations they claimed that their "best legal advice" was that there was no legal basis for providing compensation, but, they said, their final "take-it-or-leave-it" settlement offer was without prejudice to the right of the Lubicon people to go to court and sue for compensation. The final "take-it-or-leave-it" settlement agreement which they then tabled, of course, was not without prejudice at all, but contains a full and final release as well as specifically requiring the Lubicon people to cede all possible basis for any such legal action. Federal officials then claimed that they'd never agreed to discuss compensation, and that the Lubicon people had known all along that they weren't prepared to discuss compensation -- a claim easily disproven by the attached correspondence between Chief Ominayak and Prime Ministerial Chief

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of Staff Burney. Federal officials then contradicted their earlier position that no compensation was owing or would be paid -- by inaccurately representing the cost of necessary reserve set-up items like roads, water, sewer and housing as compensation, saying that they'd "offered" the Lubicon people 45 million but that the Lubicon people were "demanding additional compensation of between \$114 (sic) and \$275 million". Federal officials then compounded this basic compensation/no compensation contradiction further -- by arguing, inaccurately, that the Federal Government's final "take-it-or-leave-it" settlement offer represents "more generous compensation than provided in other aboriginal land settlements". Federal officials then claimed that the Lubicon people had no compensation coming because, they said, the Lubicon people are (supposedly) covered by Treaty 8 and no longer retain aboriginal land rights; however, the Federal Government's final "take-it-or-leave-it" settlement package specifically requires the Lubicon people to cede their aboriginal land rights and sign an adhesion to Treaty 8 -- things which obviously wouldn't be included if even Federal officials believed that the Lubicon people were already covered by Treaty 8. Most recently Mr. Colby has been taking the position that any aboriginal right to compensation which the Lubicon people may have is not against the Federal Government in any case, but against the Alberta Provincial Government "as the owner of the land" -- a novel legal theory in light of the Federal Government's clear-cut and exclusive constitutional responsibility for negotiating settlement of aboriginal land rights in Canada.

As for the Federal Government's "best legal advice" that there's no legal basis for providing compensation, it's worth noting that Federal Justice Department lawyers were unable to convince E. Davie Fulton that there's no compensation owing to the Lubicon people. Mr. Fulton, an ex-Federal Justice Minister, ex-British Columbia Supreme Court Judge and prominent Canadian jurist with credentials far surpassing any of the Justice Department lawyers who are providing the Federal Government's so-called "best legal advice", was hired several years ago by the Federal Government to conduct an inquiry into the Lubicon Lake situation. After reviewing the situation for nearly a full year, during which time he heard submissions on the question of compensation from lawyers for all sides, Mr. Fulton concluded, among other things:

- 1.) that "there is a very strong case that the Band is entitled to compensation for those revenues (from the 25.4 square mile area set aside in 1939)... (and that)... the responsibility for payment rests on Canada, where rests also the responsibility for non-fulfillment of the 1940 agreement, and all the consequences thereof".

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- 2.) that "(he was) reasonably satisfied that...there have been appreciable deficiencies in payment over the years (for lost treaty benefits), and that when a final calculation can be made a considerable sum will be found to be due (from the Federal Government)".
- 3.) that "in principle the Band has a valid claim (for lost programs, benefits and services), to the extent that it can be documented that there was a shortfall between what they should have received (from the Federal Government) by way of such programs and services had they been settled on their reserve, and what they have in fact received since the time when they should have been so settled".
- 4.) that "The equities of this situation...seem strongly to support their claim (for loss of livelihood from hunting and trapping)... (and that)...again looking at the equities -- the obligation to compensate (for this item) should be that of Alberta".
- 5.) that "substantial sums by way of compensation" for other types of compensation may produce "some willingness to compromise with respect to (compensation for the billions of dollars in natural resources extracted from unceded Lubicon lands)".
- 6.) that he hopes Alberta, "which derives the revenue from the development which produces (the loss of future hunting and trapping livelihood and revenues), will be prepared to entertain in principle a request for some compensation program (in this area)".
- 7.) "that (compensation for future loss of gas and oil revenues), based as it is on continuing Native Title, would (only) terminate with a satisfactory resolution of the other matters in dispute...(making clear)...the desirability and importance of a satisfactory solution of the Band's claims generally, and the necessity of an approach on the part of all concerned to perceive and appreciate the deep-rooted and understandable apprehensions of the Band concerning its future unless it receives long-delayed and adequate adjustments and compensation for the neglect and injuries it has suffered."
- 8.) that he was "not aware of any legal basis upon which monetary damages have been assessed and awarded for (trespass, waste and destruction of culture and lifestyle) apart from the demonstrable economic losses flowing from the interference with native right and title...(but that)...these facts seem to emphasize the desirability of generous attitudes towards acceptance of claims such as those for compensation for programs and services not received in the past (which might have eased the disruption), for employment opportunities and

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job training programs, and for a full and generous 'catch-up' program to establish the Band upon its Reserve and bring it the benefits of educational and other services and programs which will assist the members of this community to recover from the severe dislocations and disadvantages to which they have undoubtedly been subjected, and to adjust to the future problems which the continuance of development undoubtedly poses for them".

- 9.) that he hopes "Canada will find it possible to proceed on the basis that the full legal as well as the other costs attributable to formulation and processing of the Band's claims will be accepted (and paid) in full".

Recognizing the difficulties involved in seeking to quantify and qualify all of these various possible categories of compensation, Mr. Fulton effectively proposed to simplify the calculation of compensation by approaching the question primarily under the general category of "lost treaty benefits", defined as benefits which the Lubicon people should have received under treaty but didn't receive. The Lubicon people rejected this proposed approach, taking the position that they hadn't signed treaty and consequently made no claim to lost benefits under treaty. Mr. Fulton pointed out that other aboriginal people in Canada who'd never signed treaty -- like those in British Columbia, the Yukon, the NWT and the Maritimes -- had all been receiving programs, services and benefits from the Government of Canada for many years. Therefore, he said, compensation for lost programs, services and benefits was justified, and, he argued, calculating the value of lost programs, services and benefits would be far easier than trying to calculate the value of truly inestimable items like lost way of life. Under these circumstances the Lubicon people agreed to research and attempt to calculate the value of lost programs, services and benefits. These Lubicon calculations regarding the value of lost programs, services and benefits, done during the Fulton Inquiry in 1985, produced the compensation numbers which representatives of the Federal Government have been quoting in their "greed not need" propaganda campaign.

The method which the Lubicon people used to calculate the value of lost programs, services and benefits is as follows: First they went to the archives of Canada and looked up the amount of money allocated by the Government of Canada for Indian programs, services and benefits going back to 1899 (when the Government of Canada started delivering programs, benefits and services to Indians in Northern Alberta). Then they looked up the number of Indians recognized by the Government of Canada each year which these annual allocations were intended to serve. Next they divided annual Government allocations by the number of Indians

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recognized by the Government each year to produce a per capita amount. Then they multiplied this per capita amount by official Government inflation and interest rates; multiplied the resulting figure by a average Lubicon population of 400 (Lubicon population figures range from high of 3000 at the turn of the century to a low of 300 following a devastating influenza epidemic in 1918); and subtracted the value of programs, services and benefits actually received by the Lubicon people from the Government of Canada -- primarily since 1980-81. Using this approach the amount of money owing the Lubicon people for lost programs, benefits and services totalled 167 million dollars. Mr. Fulton accepted this basic approach, suggesting only that the average population figure be negotiable based on the evidence and that the calculations should start in 1939, when Government officials first made contact with the Lubicon people. The Lubicon people were prepared to negotiate the average population figure but saw no reason to cede the value of 40 years of lost programs, services and benefits simply because the Government of Canada had not dealt with them in 1899 when it should have. These discussions with Mr. Fulton on the question of compensation were continuing when his Inquiry was prematurely terminated by the Federal Government early in 1986. Starting the calculations in 1939 produces the 114 million dollar figure being used by representatives of the Federal Government in their "greed not need" propaganda campaign; running the numbers from 1899 and using the 479 population figure established at the time of the Grimshaw Agreement produces the 275 million dollar figure. The figure actually put forward by the Lubicon people for reaction and negotiation, however, as Federal officials know very well, remains the 167 million dollar figure tabled with Mr. Fulton at his behest in 1985.

In addition to compensation owing to the Lubicon people by the Federal Government, there's of course also the question of compensation owing to the Lubicon people by the Provincial Government. This question was discussed during the Fulton Inquiry and is currently a matter of continuing discussion between the Lubicon people and the Government of Alberta, although no apparent progress toward agreement has been made in discussions with the Provincial Government on the issue of compensation.

Direct discussions between the Lubicon people and the Government of Alberta on the issue of compensation began on October 14, 1988, the day before Lubicon check-points were established. Provincial negotiators asked Lubicon negotiators about the Lubicon position on compensation. Lubicon negotiators said that the Lubicon people proposed to negotiate compensation based on the value of the resources illegally extracted from unceded Lubicon land, but that the value of those resources was not known

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to the Lubicon people and would have to be provided by the Provincial Government. Provincial negotiators said that the Lubicon people were talking about a huge research effort not possible before the next day (and establishment of Lubicon checkpoints which negotiations were seeking to prevent), and therefore asked instead for "a number or formula" so that the Provincial Government would know "the extent of it's exposure". In an attempt to respond to this Provincial Government request for a compensation "number or formula", the Lubicon people quickly reviewed and considered the limited information which they did have relevant to the issue of Provincial compensation. They knew that most development activity in the area didn't start until the winter of 1979-80, meaning that the period in question was basically 8 years. They had a newspaper article which indicated that the Provincial Government received about 20 percent of the value of the resources extracted in royalties. They had an affidavit filed by Provincial Government lawyers which said that 500 million dollars in resources had been extracted from traditional Lubicon lands in 1982, 89 million of which had been paid to the Provincial Government in royalties. They presumed that the numbers would have been smaller prior to 1982, since development activity had been less prior to 1982, but they didn't know what the numbers looked like since 1982, because, while production was clearly up, the price of oil had gone down and Provincial royalty rates had changed as well. Working with this limited information as the basis for their position, the Lubicon people proposed a formula for Provincial compensation of 10 percent of the royalties received by the Provincial Government for resources extracted from unceded Lubicon lands, or, in other words, for 2 percent of the value of resources extracted.

Provincial Government negotiators didn't respond to the proposed Lubicon compensation formula that night, but the following week Alberta Provincial Premier Don Getty said publicly that the Lubicon people had tabled a formula which would provide them with "over 100 million dollars in Alberta taxpayer's money". Premier Getty is of course mistaken about the source of such money. It didn't come from Alberta taxpayers. It came from resources illegally expropriated from unceded Lubicon lands, obviously for the great benefit of Alberta taxpayers, the great benefit of oil companies, and, presumably, the great benefit of the Provincial economy as a whole. If 10 percent of the royalties received by the Alberta Government amounts to over 100 million dollars, then the Alberta Government has received over a billion dollars in royalties for resources extracted from unceded Lubicon lands. If the Provincial Government receives 20 percent of the value of the resources extracted in royalties, then the oil companies have extracted over 5 billion dollars in resources from unceded Lubicon lands. Viewed from this perspective the Lubicon people are only asking for a meager 2 percent return on the value of the

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hundreds of millions and billions of dollars worth of resources which have been illegally expropriated from their unceded traditional lands, to their great and everlasting disadvantage, and to the great and continuing advantage of those who've effectively destroyed the traditional Lubicon economy and way of life while plundering Lubicon resources.

The bottom line on compensation, as the Lubicon people have said repeatedly, is that compensation is negotiable. The numbers involved are huge, no matter which approach is used. However the dollar value of any imaginable Lubicon settlement, including compensation, only represents a small fraction of the benefits which have already accrued to the people of Alberta and Canada, and will continue to accrue to the people of Alberta and Canada, as a result of the exploitation of traditional Lubicon lands. In addition, since the fund is essentially a trust fund for future generations of Lubicon people, investments will have to be appropriately conservative in nature in order to protect the integrity of the fund, and provision will also have to be made for inflation so that the relative value of the fund will not erode, with the inevitable result that interest revenues available to the Lubicon people on an annual basis from the fund will be unavoidably low in relation to the size of the fund.

Federal Government propagandist Colby has charged that the Lubicon people "want a ton of money...so that no one will ever have to work again", suggesting that the Lubicon people have base or ulterior motives in seeking financial compensation. Even if that were the case, which it isn't, the fact is that it's their money, it belongs to them as a matter of right and they should be able to do with it what they please -- whether or not those noble souls who've stolen Lubicon lands and hired Mr. Colby to impugn Lubicon motives approve of what the Lubicon people are proposing to do with their compensation monies. For the record, however, and this is something which Federal officials know very well, the Lubicon people have explicitly rejected the payment of any compensation monies to individuals and are prepared to include a provision to that effect in any final settlement agreement. Their intention is to use compensation monies derived from all sources to establish a capital fund designed to generate interest revenues in perpetuity for the Lubicon people as a whole. These interest revenues will be used for community projects and to help their members establish for-profit entrepreneurial enterprises.

Lastly comment need be made about some of the specific items which Mr. Colby has been using to try and make the Lubicon people appear "greedy".

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The Indoor Swimming Pool

It's true that the Lubicon people have proposed to include an indoor swimming pool in their school so that their children can learn to swim. For some reason this proposal is considered particularly outrageous to certain media commentators who live in cities like Edmonton where schools either have pools or access to public pools and swimming instruction is part of the required curriculum. Maybe it's just outrageous for Indian parents to want their children to learn how to swim, and/or for money to be spent on a pool for Indian children.

A Recreation Centre (Indoor Ice Skating Arena)

The Lubicon people have also proposed to build an indoor ice skating arena equipped with an ice-conditioning machine for their young people. They see this facility as important because profound changes in their society have produced a situation where their young people have time on their hands and need something to do other than drink and get in trouble. They are proposing to equip this indoor ice skating arena with an ice-conditioning machine so that they can take maximum advantage of this facility during peak use periods.

Mr. Colby has made much of the fact that the Lubicon people would like to build an indoor ice skating area equipped with an ice-conditioning machine. Why Mr. Colby thinks this fact makes the Lubicon people look unreasonable is a mystery, unless, as in the case of the swimming pool, it's simply a reflection of his own basic racism and/or represents an effort on his part to try and take advantage of racism in Canadian society. In fact such facilities are common in Canadian communities and often play an especially important role in northern Canadian communities where there's typically little else to do during the long winter months. Similarly ice-conditioning machines are common because they minimize down-time during peak use periods. As for the particular ice-conditioning machine in question, it was recommended by the Parks and Recreation Department of the City of Edmonton which operates a number of municipal ice skating arenas and has had considerable experience with available ice-conditioning machines.

Combination Old Peoples Home and Day Care Centre

The Lubicon people propose to build a combination old peoples home and day care centre. They believe that they can provide necessary care for both groups out of the same facility, that having children around the old people during the day will be good

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for the old people, and that having the old people around the children will be good for the children. This idea flows quite logically and naturally from an essentially pre-literate traditional society where essential cultural information, information which defines the nature of that society, has always passed from the old to the young by word-of-mouth.

Typically Lubicon old people are cared for by relatives for as long as it's possible to do so. When it's no longer possible, they have to be sent to an old people's home at least 70 miles away from friends and relatives, where they face a strange society, strange people, a strange language, strange food and where they're effectively stored until they die. It's all very difficult and painful and shouldn't be necessary. As a humane and caring society, the Lubicon people are committed to doing better. One would think that the Government of the Canadian people would be similarly committed -- but it's not. Rather representatives of the Federal Government actually cite the Lubicon proposal to build a modest old people's home as a part of their new reserve community as yet another example of supposed Lubicon "greed" and lack of reasonableness.

The Lubicon people seek to create a day care centre for the same reason that other people do. Young women of child-bearing age want and/or need to be involved in the economy, and arrangements have to be made to provide care for their children. Traditionally child care was a requirement met by friends and relatives. However, as the Lubicon people move from a traditional hunting and trapping economy where roles were relatively few and simple, to a vastly more complicated mixed economy, child care arrangements which have worked in the past are proving less and less satisfactory. The Government of Canada is apparently about to officially recognize the need for day care on the part of most Canadians by establishing a Federal day care program. This anticipated Federal day care program is reportedly of the normal sort and provides a certain amount of money per day to provide day care services. Depending upon how it's designed and how much money it provides, such an approach has potential in areas where there are existing facilities and social agencies ready and willing to set-up and operate day care programs. However the Lubicon people have no social agencies and no facilities and such an approach is therefore not tenable for them until they have some basic community infrastructure in place.

The Federal Government's response to the Lubicon proposal to build a combination old people's home and day care centre was that "the Federal Government has no capacity to build such a facility, but the (Federal) Department of Health and Welfare will be coming out later this year with a day care program to which the Band can apply".

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Free Cable TV

Historically Canada has always considered itself a vast land held together by such things as the Canadian National Railroad, the Canadian Broadcasting System and Air Canada. These are the type of things which tie people from Nova Scotia to Vancouver together economically and supposedly give them common identity as Canadians. As such all of these things are financed by the Federal Government.

Television reception in the Lubicon Lake area ranges from terrible to non-existent. If the Lubicon people are to join Canada, they believe that they should at least be able to watch the national news -- the news regarding what's happening in the rest of the country -- along with other Canadians. They therefore asked to be provided with a satellite dish and small transmitter (with a range of about ten miles to twelve miles).

The Lubicon proposal to be provided with a satellite dish and small transmitter was first tabled on December 5th during discussions on housing and community facilities with officials of the Department of Indian Affairs. Officials of the Department of Indian Affairs said that they had "no capacity" to respond to such a proposal, and so the matter was raised with Federal Negotiator Malone -- who agreed to arrange meetings with officials from the office of the Secretary of State (concerned with things cultural), the Department of Communications and the Canadian Radio-Television and Telecommunications Commission (CRTC) -- to see if any of these other Federal Government bureaucracies had any "capacity" to respond. Having heard nothing back from Mr. Malone on these agreed meetings, the matter was raised with him again on December 17th, at which time he said that he'd simply "forgotten" to follow-up, apologized for failing to follow-up and promised again to arrange the agreed meetings. The matter was raised again during the December 21st meeting with Indian Affairs Minister McKnight and Prime Ministerial Chief of Staff Burney, at which time Mr. Burney promised to arrange the agreed meetings when negotiations reconvened after the Christmas holidays. The matter was raised with Mr. Malone again on January 17th, as part of Lubicon rejection of the Federal Government's "Special Development Plan for the Lubicon Lake Indian Band", at which time he again promised to arrange the agreed meetings. The matter was raised with Mr. Malone again on January 19th as part of Lubicon rejection of the Federal Government's "Lubicon Lake Band Framework Agreement for Socio-Economic Development", at which point representatives of the Federal Government at least had the decency not to make any more promises.

On January 24th, prior to tabling the Federal Government's final "take-it-or-leave-it" settlement proposal, Mr. Malone announced

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that Mr. Colby had met with representatives of the CRTC, the Department of Communications and the Secretary of State's office regarding the Lubicon satellite dish and transmitter proposal. Mr. Malone said Mr. Colby had determined that the Government of Canada had "no capacity" to support such a proposal. However, Mr. Malone said, if one of the Lubicon people wanted to set-up a for-profit cable TV business, and sell cable TV service to the other Lubicon people, that person could apply for financial assistance to the Native Economic Development Program (NEDP). If that person met normal NEDP requirements, Mr. Malone said, he or she could receive financial assistance from the NEDP sufficient to enable them to go the bank and borrow the rest of the money required to set-up a private, for-profit cable TV business.

Lubicon representatives told Mr. Malone that he'd missed the point of the Lubicon satellite dish and transmitter proposal. They told him that some enterprising entrepreneur may well later want to try and establish a for-profit cable TV business at Lubicon Lake, selling the kind of specialized programming typically associated with such cable TV businesses. However, they said, they were first seeking, as part of a negotiated settlement package, to provide the Lubicon people with a basic communications service enjoyed by Canadians across the country, whether or not some enterprising entrepreneur was interested in trying to establish a private, for-profit cable TV business at Lubicon Lake.

This is the discussion which representatives of the Federal Government have since chosen to describe as the Lubicon people "demanding free cable TV".

A Garbage Incinerator

Concerned over the long term environmental effect of burying garbage in an area with a high water table, the Lubicon people researched various means of garbage disposal. They were advised that their concerns over polluting the ground water supply with buried garbage were indeed justified. They were advised that pit disposal of garbage was environmentally worrisome from other points of view as well, and that other communities were moving away from pit disposal of garbage. They were advised that it would be "crazy" to start long-term disposal of garbage in a way known to be environmentally problematic and outmoded. They were advised that the best way to dispose of garbage was to sort out and recycle non-combustibles like metal and glass, and to then burn the rest in a properly designed garbage incinerator--equipped with "scrubbers" and capable of sufficiently high temperatures. They therefore proposed to purchase a properly designed garbage incinerator to dispose of the garbage on their

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new reserve. Contrary to the Federal Government's propaganda line, Lubicon motives in proposing to incinerate garbage on their new reserve were civic and environmental responsibility--not "greed".

Representatives of the Federal Government responded to the Lubicon proposal to purchase a properly designed garbage incinerator by saying that the Federal Government has "no capacity" to purchase a garbage incinerator but would provide funds for pit disposal of garbage. They did not deny the legitimacy of Lubicon environmental concerns. They did not deny that other communities were moving away from pit disposal of garbage. They simply said that they had "no capacity" to purchase properly designed garbage incinerators -- at least for Indian communities.

Combination Fire Hall, Police Station, Court House and Lock-up

The Lubicon people have proposed to build a combination fire hall, police station, court house and lock-up. They understandably see such a facility as an essential element of Lubicon self-government. In addition, the nearest non-Lubicon police station, lock-up, court house and fire station is 70 miles away and, along with other aboriginal people in Canada, Lubicon experience with non-native police, court houses, jails and fire protection services is worse than terrible.

Federal Government response to the Lubicon proposal to build a combination fire hall, police station, court house and lock-up was that the Federal Government had "no capacity" to support such a proposal, but that they could provide funds for a fire truck and one bay fire hall.

SUMMARY

Setting aside for the moment the inescapable conclusion that the Federal Government wasn't ever serious about negotiating an equitable settlement of Lubicon land rights, but rather only intended to use the pretense of serious negotiations as part of a deliberate and concerted effort to try and publicly discredit the Lubicon people, the biggest problem with the Federal Government's final "take-it-or-leave-it" settlement offer is that it provides the Lubicon people with absolutely no capability to once again become socially and economically independent and self-sufficient. Basically the so-called "offer" provides housing and a school. Facilities and equipment necessary for the Lubicon people to manage and operate their own affairs are lacking, as is essential vocational training, as is all commercial and economic

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development, as is all independent financial capability. As Chief Ominayak said in a public statement on January 31st formally rejecting the Federal Government's so-called offer, "acceptance of this 'take-it-or-leave-it' Federal offer would ensure that (the Lubicon people) remain forever dependent upon welfare to support ourselves, and upon outsiders to manage and provide for us". "We will never voluntarily accept," the Chief said, "such a humiliating and degrading future".

WHAT PEOPLE CAN DO

This latest disgraceful episode has clearly been orchestrated out of the Prime Minister's office by the Prime Minister's Chief of Staff. People should therefore write directly to Prime Minister Brian Mulroney demanding that he respond directly, instead of allowing him to slough them off to his newly appointed Indian Affairs Minister Pierre Cadieux. They should let Mr. Mulroney know that he's not fooling anybody with his deceitful propaganda campaign. They should let him know what they think about his using taxpayer's money to try and deceive taxpayers about this long-standing and increasingly well known Canadian scandal. They should let him know that he can no longer avoid personal responsibility for the continuing Lubicon tragedy. They should demand that his Government start meeting its Constitutional responsibilities. And, just to make sure Mr. Mulroney gets the message that enough is enough, they should send noted copies of their letters to the Leader of the Liberal Party of Canada John Turner, the Leader of the New Democratic Party of Canada Ed Broadbent, the National Chief of the Assembly of First Nations Georges Erasmus, Liberal Indian Affairs Critic Ethel Blondin, New Democratic Indian Affairs Critic Jim Fulton, their members of Parliament and the editors of their local newspapers.

Mailing addresses for the Federal politicians mentioned above are as follows:

Canadian Prime Minister Brian Mulroney
Government of Canada
Ottawa, CANADA K1A 0H4
(no postage required if mailed within Canada)

The Hon. John Turner
Leader of the Official Opposition
House of Commons
Ottawa, ONT K1A 0H4
(no postage required if mailed within Canada)

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The Hon. E. Broadbent
Leader of the New Democratic Party
House of Commons
Ottawa, ONT K1A 0H4
(no postage required if mailed within Canada)

Mr. Georges Erasmus
President
Assembly of First Nations
47 Clarence Street, Suite 300
Ottawa, ONT K1N 9K1

Ms. E. Blondin
Liberal Indian Affairs Critic
House of Commons
Ottawa, ONT K1A 0H4
(no postage required if mailed within Canada)

Mr. Jim Fulton
NDP Indian Affairs Critic
Room 756, Confederation Building
House of Commons
Ottawa, CANADA K1A 0H4
(no postage required if mailed within Canada)

Department of External Affairs



Ministère des Affaires extérieures

Canada

RETURN	POUR
RENOUVELER	POUR LE DOSSIER
DATE	DATE
45-DA-13-1-3 - LUBICON LAKE RAND	
CL C-1	

Ottawa, Ontario
K1A 0G2

April 18, 1989

IMH-0608

Ms. Marilyn Whitaker
Director
Constitutional and Self-Government Directorate
Department of Indian Affairs and
Northern Development
Les Terrasses de la Chaudière
10 Wellington Street, North Tower
Hull, Quebec
K1A 0H4

Dear Ms. Whitaker: *Marilyn*

Please find enclosed a self-explanatory memo and attachments forwarded by the Canadian Embassy in Vienna for the attention of the Minister of Indian Affairs and Northern Development.

J. Daniel Livermore
Director
Human Rights and
Social Affairs Division

Encl.

c.c. PMO
DND/Associate Minister's Office



TO/À • The Under-Secretary of State
for External Affairs (IMH)
FROM/DE • The Canadian Embassy, VIENNA

REFERENCE •
RÉFÉRENCE

SUBJECT •
SUJET • The Lubicon Lake Indian Nation

Security/Sécurité
UNCLASSIFIED
Accession/Référence
File/Dossier
45-13-3
Date
March 9, 1989
Number/Numéro
VNA-0803

ENCLOSURES
ANNEXES

2

DISTRIBUTION

By Ottawa
(with encl)

RWD
RWR

Attached is a self-explanatory letter from Dr. Peter Schwarzbauer of the Association for Endangered Peoples - Austria to the Hon. Mary Collins, Associate Minister of Defence and her reply to Dr. Schwarzbauer.

2. Would you please ensure that Ms. Collins' office plus the office of the Prime Minister and the Minister of Indian Affairs and Northern Development receive copies of the attachments.

Michael Shenstone
Ambassador

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Associate Minister
of National Defence



Ministre associé
de la Défense nationale

Vienna, March 7, 1989

Dr. Peter Schwarzbauer
Association for Endangered Peoples - Austria
Weissgasse 9-13/2/1
A-1170 Vienna

Dear Dr. Schwarzbauer,

In reply to your communication of March 3,
I am writing to say that your letter concerning the
CSCE and the Lubicon Lake Indians is being forwarded
this week to the office of Prime Minister Mulroney.
A copy is also being sent to the Minister of Indian
Affairs and Northern Development, the Honourable Pierre
Cadieux, as you have requested.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Mary Collins".

Mary Collins

GESELLSCHAFT FÜR BEDROHTE VÖLKER - ÖSTERREICH

ASSOCIATION FOR ENDANGERED PEOPLES - AUSTRIA
ASOCIACIÓN POR LOS PUEBLOS AMENAZADOS - AUSTRIA
DRUŽBA ZA OGROŽENE NARODE - AVSTRIJA
DRUŠTVO ZA UGROŽENE NARODE - AUSTRIJE

Menschenrechtsorganisation für ethnische, rassische und religiöse Gruppen und Minderheiten

To
Mrs. Mary Collins
State Minister for Defense

via
Canadian Embassy
Dr. Karl Lueger Ring 10
1010 Vienna
Austria

Kleeblattgasse 4
A-1010 Wien, Austria
(0 22 2) 66 16 15
XXXXXXXXXXXXX
(0 22 2) 53 51 615

Bankverbindung:
Vereins-Konto: PSK 7238.909
Kampagnen-Konto: PSK 7239.001

Vienna, March 3rd 1989

Dear Mrs. Collins!

We would be very thankful if you could pass on the enclosed letter and noted copies to the Prime Minister, the Hon. Brian Mulroney, and the Minister of Indian Affairs and Northern Development, the Hon. Pierre Cadieux.

The reason for asking especially you to do this lies within your capacity of representing Canada at the CSCE-Foreign Minister Meeting in Vienna, March 6-8 1989. We see a contradiction between Canada's activities and suggestions during the Vienna CSCE-process concerning "national minorities" and Canada's treatment of Indian people. The Lubicon Case is just one example.

Thank you very much for your time and consideration!

Yours sincerely



on behalf of the board
Dr. Peter Schwarzbauer
Weissgasse 9-13/2/1
A-1170 Vienna

(222) 45-33-51 (priv.)
34-25-00/315 ext. (office)

Enclosures

c Lubicon Lake Indian Nation

GESELLSCHAFT FÜR BEDROHTE VÖLKER - ÖSTERREICH

ASSOCIATION FOR ENDANGERED PEOPLES - AUSTRIA
ASOCIACIÓN POR LOS PUEBLOS AMENAZADOS - AUSTRIA
DRUŽBA ZA OGROŽENE NARODE - AVSTRIJA
DRUŠTVO ZA UGROŽENE NARODE - AUSTRIJE

Menschenrechtsorganisation für ethnische, rassische und religiöse Gruppen und Minderheiten

To the Prime Minister of Canada

the Honorable Brian Mulroney

via
Canadian Embassy
Dr. Karl Lueger Ring 10
1010 Vienna
Austria

Kleeblattgasse 4
A-1010 Wien, Austria
~~(0 22 2) 66 16 15~~
(0 22 2) 53 51 615

Bankverbindung:
Vereins-Konto: PSK 7238.909
Kampagnen-Konto: PSK 7239.001

Vienna, March 3rd 1989

Re: Canada's position in the CSCE-process vs. treatment of Indian people

Dear Sir!

We would like to use the opportunity of Canada's representation in the CSCE- Foreign Minister Meeting in Vienna to point out that Canada is acting against its own proposals made during the CSCE-process (1986-1989) in Vienna.

Some observers have called the final document of the Vienna CSCE a "history making paper". And indeed governments, including the Canadian government, have agreed that human rights violations are an international issue. No more can a government call human rights violation an "internal" matter. As you will know Canada was very instrumental during the CSCE to push the issue of the rights and the protection of "national minorities" (see Canada's proposal of Feb. 1987 to the CSCE; according the development of the rights of indigenous peoples, Indian people are no "national minorities" but have more far reaching rights - but they have at least the same rights as "national minorities").

The Lubicon Case is just one example to demonstrate that Canada is not living up to its proposals. Although former Minister of Indian Affairs, Bill McKnight, tried to convince everybody that the governments offer is "fair and reasonable", nobody really is swallowing that. Without going into detail I would recommend you to read an indepth analysis of the government's offer, written by Mark Lowey in the Calgary Herald of Feb 7 and 8 1989. His main point is that even what the government is offering is in no way guaranteed beside the fact that the Lubicon position is the only fair thing in that whole matter. When Bill McKnight commented this offer in that sense that it must also consider earlier settlements with other Indian people and that those Indian people might be embarrassed if the Lubicon get what they ought to get, this is neglecting several things: (1) Indian people are standing firm behind the Lubicons and are not at all against the Lubicon position; (2) it is only due to the political weakness of Indian people that they have accepted "bad deals" (vs. nothing). We do not consider all of that earlier settlements as fair, e.g. the Ft. Chip settlement.

We urge you to reconsider the Federal Government's position in the Lubicon Case and ask you to be instrumental in reopening the negotiations.

Präsident: Prof. Robert Jungk

Ehrenmitglieder: Dr. John Bunzl, Univ.-Doz. Dr. Gerhard Drekonja, Milton Fineran (OGLALA LAKOTA COLLEGE), Georg Gaupp-Berghausen (†), Mario Gonzalez, USA, Dr. George Grünberg, Dr. Alfred Janata, Javier Armato (Yukon-Venezuela), Birgit Killis-Straight (Lakota Treaty Council), Peter Dr. Manfred Kneiwasser

/003216

'Prime Minister Mulroney; cont.)

Thank you for your time and consideration. A response to this letter would be highly appreciated.

Yours sincerely



on behalf of the board

Dr. Peter Schwarzbauer

Weissgasse 9-13/2/1

A-1170 Vienna

Austria/Europe

(222) 45-33-51 (priv.)

34-25-00/315 (office)

Enclosures

c Pierre Cadieux

E. Broadbent

J. Turner

Lubicon Lake Indian Nation

~~RESTRICTED~~

CSCE/WT.27

Vienna, 11 February 1987

Original: ENGLISH

OF REPRESENTATIVES OF THE PARTICIPATING STATES
OF THE CONFERENCE ON SECURITY AND CO-OPERATION
EUROPE, HELD ON THE BASIS OF THE PROVISIONS
OF THE FINAL ACT RELATING TO THE FOLLOW-UP TO
THE CONFERENCE

PROPOSAL SUBMITTED BY THE DELEGATION OF CANADA AS WELL AS THOSE OF
BELGIUM, THE FEDERAL REPUBLIC OF GERMANY, THE NETHERLANDS,
NORWAY AND THE UNITED STATES OF AMERICA

The participating States express their intention to implement the
following:

They will take all the necessary legislative, administrative, judicial
and other measures and apply the relevant international instruments by which
they may be bound, to ensure the protection of human rights and fundamental
freedoms of persons belonging to national minorities within their territory.
They will refrain from discrimination against such persons and contribute to
the realization of their legitimate interests and aspirations.

They will seek to protect the unique identity of national
and regional cultures by respecting the free and independent exercise of
rights by persons belonging to such minorities and cultures by, inter alia:

- promoting in practice unhindered opportunities for these persons to
maintain and develop their own culture in all its aspects, including language,
literature, religion, cultural monuments and historical artifacts;
- promoting in practice unhindered opportunities for them to give and
receive, individually or collectively, instruction in their own culture,
especially through parental transmission of language, religion and cultural
identity to their children.

Mappe Kanada