

Canada's Position on the
Land Claim
of the
Lubicon Lake Band

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Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

FEB - 5 1988

MEMBERS OF PARLIAMENT AND SENATORS

Lubicon Lake Land Claim

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

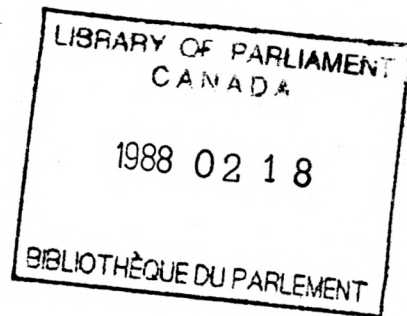
It contains the text of an advertisement placed in several Alberta newspapers today outlining the federal government's position on the claim.

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

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

Bill McKnight

Bill McKnight



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

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

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

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

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

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

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

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

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

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

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

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

The responsibility of the Province of Alberta

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

How is a land base calculated under Treaty 8?

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

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

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

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

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

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

Where do we go from here?

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

The Honourable Bill McKnight
Minister of Indian Affairs and Northern Development



Information

LUBICON LAKE BAND LAND CLAIM

Summary

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

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

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

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

Lubicon Lake Band land claim

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

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

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

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

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

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

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

The band's public relations activities

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

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

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

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

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

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

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

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

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

Towards a negotiated settlement

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

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

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

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

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

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

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

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

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

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

Present socio-economic situation of the band

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

Among the services provided are the following:

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

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

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

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

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

These in part include:

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

Recent developments

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

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

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

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

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



information

LUBICON LAKE BAND

GOVERNMENT PROGRAMS AND BENEFITS

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

HOUSING

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

EDUCATION

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

SOCIAL ASSISTANCE

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

WATER SERVICES

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

POWER

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

TOTAL INAC CONTRIBUTION TO LUBICON LAKE BAND:

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

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

forecast for 1987/88 total is expected to be:

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

HEALTH ISSUES

Tuberculosis Outbreak

- Current status as of January 5, 1988:

358 natives received skin tests;

107 were positive;

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

105 natives have been receiving treatment of one drug.

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

- the Lubicon Lake Band claims that 91 people have been affected by tuberculosis. This is a misleading comment and implies that 91 people have active tuberculosis as opposed to the 37 cases that are being treated as active cases;
- Medical Services Unit, Health and Welfare Canada, is providing the following services in the community:
 - lay dispenser twice a week;
 - full time community health worker located in Little Buffalo;

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

RESOURCE MANAGEMENT

Moose population

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

EMPLOYMENT AND TRAINING

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

MEMBERSHIP

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

NEGOTIATIONS

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

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

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

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



news release

Date

For release

MALONE DELIVERS FEDERAL REQUEST TO ALBERTA

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

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

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

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

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

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