

Lubicon Lake Indian Nation

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**Submission to the Fourth Session of the Working Group of the Universal Periodic Review
Regarding Canada's Human Rights Record
5-16 February 2009**

Synopsis

1. Canada has been the subject of several UN decisions regarding abuse of the human and aboriginal rights of the Lubicon Lake Indian Nation under two international human rights covenants to which Canada is a signatory. Canada has not only ignored these decisions but has misrepresented them to both Canadians and to members of the international community. The Lubicon Lake Indian Nation respectfully requests that the UN Human Rights Council take all necessary steps to ensure that Canada complies with UN findings respecting violations of the human and aboriginal rights of the Lubicon people under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Background

2. In 1984 the Lubicons filed a complaint with the UN Human Rights Committee charging Canada with denying the Lubicons the right of basic subsistence as a people under Article 1 of the International Covenant on Civil and Political Rights.

3. In 1987, after hearing a number of submissions from both sides, the UNHRC agreed to hear the Lubicon complaint concluding "there are no effective (domestic) remedies available to the Lubicon Band". The Committee also instructed Canada "to take interim measures of protection to avoid irreparable damage to (Lubicon) Chief Ominayak and other members of the Lubicon Lake Band".¹

4. On March 28, 1990, the Thirty Eight Session of the UNHRC ruled on the 1984 Lubicon complaint. The Committee broadened the cultural, religious and linguistic rights protected under Article 27 of the International Covenant on Civil and Political Rights "to include the rights of persons, living in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong". The Committee then found that "historical inequities...and more recent developments threaten the way of life and culture of the Lubicon people and constitute a violation of Article 27 so long as they continue".²

5. Accepting Canadian government assurances that Canada was seeking to negotiate a settlement with the Lubicon people that would respect Lubicon land rights, the Human Rights Committee also found that "Canada proposes to rectify the situation with a remedy that the Committee deems appropriate within the meaning of Article 2 of the Covenant (essentially providing that the parties to the Covenant undertake to respect and ensure the rights of all people

¹ This decision is reported in UN document CCPR/C/30/D/167/1984 dated 27 July 1987.

² This decision is reported in UN document CCPR/C38/D/167/1984.

living within its Territory)”. Commenting on the relationship between this finding and the finding holding Canada in violation of the Covenant as long as the situation continues, a Committee official was quoted in the Canadian media as saying the Committee decision is “telling both sides to continue negotiating in good faith”.

6. In October of 2005 the Lubicons made another submission to the UNHRC pointing out that 15 years had passed, that resource exploitation in the unceded Lubicon Territory had continued to wreak irreparable damage to Lubicon society and the Lubicon people, that no “interim measures of protection” had ever been taken by Canada contrary to the 1987 Committee decision, and that Canada had still failed to comply with Committee findings or to rectify the situation.

7. Ignoring the charge that no “interim measures of protection to avoid irreparable damage” had ever been taken and that resource exploitation activity had continued to wreak irreparable damage to Lubicon society and the Lubicon people, Canada acknowledged that “Land claim negotiations between the Government of Canada and the Lubicon Lake Indian Nation are at an impasse”. Canada alleged the reason for the impasse is “The Lubicon assert that Canada’s mandate is not sufficient to meet (Lubicon) demands, especially as it relates to the issues of financial compensation and self-government”. Canada claimed “the (Canadian) Minister of Indian Affairs and Northern Development wrote to (Lubicon) Chief Ominayak (on June 23, 2005) proposing a return to the negotiation table in regard to issues other than compensation and self-government, in order to continue progress toward a settlement of the Lubicon land claim”. Canada claimed “That offer was rejected by Chief Ominayak”.

8. These statements made by Canada to the UNHRC misrepresent both the reason for the impasse in negotiations and the content of the related exchange of correspondence between the Canadian Indian Affairs Minister and the Lubicon Chief. Negotiations did not reach an impasse because “the Lubicons assert that Canada’s mandate is not sufficient to meet [Lubicon] demands”. Negotiations broke down because Canadian negotiators indicated that they had no mandate at all to negotiate Lubicon self-government as part of a settlement of Lubicon land rights, and because Canadian negotiators refused to discuss financial compensation unless the Lubicons agreed to commence compensation negotiations with a bottom line figure requested by Canadian negotiators after they refused to discuss all substantive bases for compensation.³

9. In October of 2005 the Eighty-Fifth Session of the UNHRC made the following concluding observations regarding the 2005 Lubicon and Canadian submissions:

“The (UNHRC) is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party (Canada) has not provided information on this specific issue. (Articles 1 and 27).

“The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant (on Civil and Political Rights), as already found by the Committee. It should consult with the Band before granting licences for economic

³ Copies of the exchange of correspondence between the Minister and the Chief are attached to the May 1, 2005 Lubicon submission to the 36th Session of the UNCESR. The complete Lubicon submission is available at: <http://www.ohchr.org/english/bodies/cescr/docs/info-ngos/lubiconlakeindian.pdf>.)

exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant”.⁴

10. In November of 2005 Canada proposed to proceed with negotiations on the basis of a non-binding Memorandum of Intent “to pursue an agreement that would include (establishment of an Indian reserve for the Lubicon people and provision of community construction funds)”. The Memorandum of Intent said “All other elements of the Lubicon Lake Claim Settlement Agreement would remain outstanding and eligible for future negotiation”.

11. What Canada was thus proposing was that the Lubicons agree to set aside long-standing settlement issues as a pre-condition of returning to the negotiating table with no assurance that Canada would ever negotiate these key settlement issues -- including economic development, self-government, financial compensation, wildlife management and environmental protection.⁵

12. On May 1, 2006 the Lubicons made a submission to the 36th Session of the UN Committee on Economic, Social and Cultural Rights. The 2006 Lubicon UNCESCR submission referred to the 1987 and 1990 decisions of the UNHRC and pointed out that there is still no settlement of Lubicon land rights; that no “interim measures of protection to avoid irreparable damage” to the Lubicons had ever been taken by Canada as per the 1987 UNHRC decision; that continuing resource exploitation activity had severely damaged the ecology of the unceded Lubicon Territory and destroyed the traditional Lubicon hunting, trapping and gathering economy and way of life; and that there had been no Lubicon land negotiations between Canada and the Lubicon people since December of 2003.

13. The 2006 Lubicon submission testified that the Lubicon people had been forced onto welfare in order to survive, lived in overcrowded housing conditions without such basic services as indoor plumbing, and suffered from serious health problems related to resource exploitation activity including cancers of all kinds, a tuberculosis epidemic affecting a third of the Lubicon population, reproduction problems which resulted in 19 stillbirths out of 21 pregnancies in an 18 month period, skin rashes among Lubicon children people so severe as to cause permanent scarring, and near-epidemic asthma and other respiratory problems.

14. On May 4, 2006 -- during the 36th Session of the UN Committee on Economic, Social and Cultural Rights -- Lubicon representatives learned that the Alberta Provincial Government had just announced the June 14, 2006 sale of rights to tarsands under 50,000 hectares of land in the heart of the unceded Lubicon Territory. Extracting oil from the tarsands requires 3 to 6 barrels of superheated water or water in the form of steam to be injected into the fragile boreal subsurface for each barrel of oil produced. The environmental consequences of this process are of great concern, not only to the Lubicons but also to people across Canada and around the world. This June 14, 2006 tarsands sale was conducted without consulting the Lubicon people contrary to the 2005 UNHRC concluding observation that Canada “should consult with the Band before granting licenses for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights (of the Lubicon people) under the (International Covenant on Civil and Political Rights)”.

⁴ UN document CCPR/C/CAN/CO/5

⁵ A copy of the proposed Canadian Memorandum of Intent is attached to the May 1, 2005 Lubicon submission to the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights.

15. On May 19, 2006 the concluding observations of the 36th Session of the United Nations Committee on Economic, Social and Cultural Rights were released. Echoing the 2005 decision of UN Human Rights Committee that found Canada in continuing violation of the International Covenant on Civil and Political Rights, the UNCESCR decision reads as follows:

“The Committee strongly recommends that the State party (Canada) resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the (International Covenant on Economic, Social and Cultural Rights). The Committee also strongly recommends the State party (Canada) conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the (International Covenant on Economic, Social and Cultural Rights).”

16. Four days later the Canadian federal Minister of Indian Affairs publicly “shrugged off” the decision of the UNCESCR. He told reporters “Let’s be clear about this”. He said “The Canadian government and the Alberta (provincial) government have been at the table for many years”. He said “We have continued to put fair and reasonable positions on the table”. “In fact”, he claimed, “the position that the government has put on the table was described in a previous United Nations report as a fair and reasonable position”.⁶

17. In July of 2006 Lubicon supporters across Canada and Europe started receiving a form letter from the Canadian Indian Affairs Minister which said, in part:

“I thank you for sharing your concerns with me; however it seems that you have been misinformed. At no time have the federal negotiators taken the position that they have no mandate to negotiate issues of self-government and compensation. In fact, in the fall of 2003, Canada made a compensation offer to the Lubicon that (Canada unilaterally deems) was fair to the Lubicon, the other First Nations in Treaty 8 that have settled similar claims (the Lubicons are not a party to Treaty 8) and to all Canadians. Canada’s offer is significantly more generous than the 1989 offer to the Lubicon, which was found by the United Nations Human Rights Committee in 1990 to be ‘appropriate to rectify the situation’ (Underlining added)”.

18. In February, 2007, the Lubicon Chief met with Canada’s Indian Affairs Minister, who proposed to appoint a new Canadian negotiator without a fixed mandate to meet with the Lubicons and see what kind of agreement could be reached. The Minister told the Chief that he would recommend an agreement reached through that process to the Canadian Cabinet.

19. In April, 2007, the Chief received a letter from the Minister proposing instead to appoint a representative to “meet with the representatives of the (unspecified) main parties to the negotiations to determine the chances of a settlement” [emphasis added] and report back to the Minister within 45 days. He proposed to appoint as a representative an individual with a close, long-term historical involvement in a senior capacity with the Lubicon issue on behalf of the Alberta government – one of the other “main parties” at the table.

20. The Chief responded that

the Lubicon people are prepared to meet with whomever you appoint to represent you in Lubicon settlement negotiations. But neither Canada nor the Lubicons has the option of not seeking a settlement of Lubicon land rights. Canada has a constitutional obligation to resolve the issue of aboriginal title in Lubicon Territory and to ensure that the aboriginal and land rights of the Lubicon people are respected. Lubicon leaders have a

⁶ A copy of the Minister’s statements responding to the UNCESCR decision and the Lubicon Chief’s response have been provided to OHCHR staff.

responsibility to our children and grandchildren to try and satisfactorily resolve this situation. We trust, therefore, that your representative will be prepared to explore how, not if, a mutually acceptable settlement of Lubicon land rights can be achieved.⁷

21. Since that time, the Canadian government has failed to send a representative to the table to discuss how to resolve outstanding issues with the Lubicon Nation.

22. Despite the 1987 UNHRC decision instructing Canada “to take interim measures of protection to avoid irreparable damage to Chief Ominayak and other members of the Lubicon Lake Band”, no such measures have ever been taken by Canada.

23. Despite the 1990 finding of the 38th Session of the UNHRC holding Canada in violation of the International Covenant on Civil and Political rights over Canada’s abuse of the human rights of the Lubicon people for as long as these developments threaten the way of life and the culture of the Lubicon people, Canada has made no effort to alleviate the potentially genocidal consequences of unbridled resource exploitation in unceded Lubicon Territory but has continued to misrepresent the situation to both Canadians and to members of the international community.

24. Despite conclusions by the 85th Session of the UNHRC and the 36th Session of the UNCESCR urging Canada to make every effort to resume negotiations with the Lubicons with a view to finding a solution which respects the rights of the Band under International Covenants, no such effort has been made.

25. Despite conclusions by the 85th Session of the UNHRC and the 36th Session of the UNCESCR urging Canada to consult with the Band before granting licenses for economic exploitation of the disputed land -- and to ensure that in no case such exploitation jeopardizes Lubicon rights under International Covenants -- no such consultations have been undertaken, and economic exploitation of the disputed land has continued apace to the great and continuing injury of Lubicon rights and interests recognized under two international human rights covenants to which Canada is a signatory. In the three years since the UNHRC’s 85th Session, new tarsands leases to over 91,000 hectares of Lubicon territory and new petroleum and natural gas leases to almost 155,000 hectares of Lubicon territory have been sold, netting almost \$27 million in bonus payments alone for the Alberta government.

Action Sought

26. Noting that Canada is a member of UN Human Rights Council despite Canada’s continuing violation of the human and aboriginal rights of the Lubicon Lake people under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and consistent with the Council’s mandate to address situations of violations of human rights, the Lubicon Lake Indian Nation respectfully requests that the UN Human Rights Council take all necessary measures to ensure that Canada complies with UN findings respecting violations of the human and aboriginal rights of the Lubicon Lake people under two international human rights covenants to which Canada is a signatory.

⁷ A copy of the correspondence between the Chief and successive Indian Affairs Ministers is attached.

Ministre des Affaires indiennes et
du Nord canadien et interlocuteur fédéral
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and
Northern Development and Federal Interlocutor
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

SECRET

MAR 30 2007

Chief Bernard Ominayak
Lubicon Lake First Nation
PO Box 8731
PEACE RIVER AB T8S 1S5

Dear Chief Ominayak:

This is further to our meeting on February 2, 2007, in which we discussed the possibility of breaking the current impasse in negotiations of the Lubicon Lake land claim.

As I agreed in our meeting, I have contacted the two gentlemen whose names you put forward as possible candidates for the position of Chief Federal Negotiator. Mr. Ken Boutillier has agreed to participate in the file. I am prepared to offer Mr. Boutillier a contract to take on the role of Federal Representative for a period of 45 days. His mandate would be to meet with representatives of the main parties to the negotiations to determine the chances of a settlement. At the end of the 45-day period, or earlier, he would provide me with a report, including recommendations on how to proceed with the file, which I am prepared to share with you and the Province of Alberta.

I believe this is in keeping with what we discussed. In order for such a process to succeed, we need the full co-operation of all the relevant parties. Please let me know if you are in agreement with my appointment of Mr. Boutillier as Federal Representative, and whether you will participate in the process outlined above.

I look forward to your early response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Prentice', written over a horizontal line.

The Honourable Jim Prentice, PC, QC, MP

Canada

P.O. Box 6731
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Lubicon Lake Indian Nation

May 8, 2007

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The Hon. Jim Prentice
Minister of Indian and Northern Affairs
Government of Canada
Ottawa, ON K1A 0H4
Fax: 613-996-9955

Dear Mr. Prentice:

Your letter dated March 30, 2007 arrived on April 18, 2007. I apologize for not responding sooner. Some of our people have been in the bush and unavailable.

I did not put forward names of possible candidates for Federal Negotiator during our meeting on February 2, 2007. You mentioned the names of four possible candidates and asked for my reaction. The names you mentioned were Alberta Provincial Judge and ex-provincial Lubicon negotiator John McCarthy, ex-Assistant Deputy Minister of Aboriginal Affairs for the Alberta government Ken Boutillier, current Assistant Deputy Minister of Aboriginal Affairs for the Alberta government Neil Reddekopp, and Edmonton lawyer Jerome Slavik. Although these people are all familiar to us and we have views on them, I told you the Lubicon people are prepared to negotiate with whomever you appoint just as long as your representative has a mandate to negotiate all outstanding settlement issues including self-government and financial compensation.

You told me you don't believe in mandates and proposed to appoint a negotiator both parties could trust to see what kind of agreement could be reached and then, assuming agreement can be reached, to recommend it to Cabinet. You said you'd talk to your proposed candidates about their availability and phone me back the next week about proceeding. George Arcand phoned me back the following week with your apologies for not calling saying that you had not yet been able to reach everybody you wanted to talk to.

You now propose "to offer Mr. Boutillier a contract to take on the role of Federal Representative for a period of 45 days... (with a)...mandate to meet with the representatives of the (unspecified) main parties to the negotiations to determine the chances of settlement". This is a different proposal than we discussed on February 2nd.

The Lubicon people don't accept the position that negotiating a settlement of Lubicon land rights is a matter of choice for the federal government while the Alberta government and the resource companies proceed as they please in Lubicon Territory. If that is your position, and your position is further that settlement is not possible unless the Lubicons simply accept the settlement offer made to the Lubicons by the government of Canada on a "take-it-or-leave-it" basis, then nothing has changed that would help us get beyond the current impasse.

Moreover, while we don't question your right to appoint whomever you please to represent the federal government in Lubicon settlement negotiations, we don't consider Mr. Boutillier to be an unbiased independent expert upon whom all parties can rely to produce an unbiased independent assessment of the chances of settlement. Mr. Boutillier has had a close, well-known, long-term involvement in a senior capacity with the Lubicon issue on behalf of the Alberta government and he is not an unbiased independent expert.

As I indicated when we met on February 2nd, the Lubicon people are prepared to meet with whomever you appoint to represent you in Lubicon settlement negotiations. But neither Canada nor the Lubicons has the option of not seeking a settlement of Lubicon land rights. Canada has a constitutional obligation to resolve the issue of aboriginal title in Lubicon Territory and to ensure that the aboriginal and land rights of the Lubicon people are respected. Lubicon leaders have a responsibility to our children and grandchildren to try and satisfactorily resolve this situation. We trust, therefore, that your representative will be prepared to explore how, not if, a mutually acceptable settlement of Lubicon land rights can be achieved.

Lastly, as we also discussed on February 2nd, the Lubicon people will require financial resources to participate in settlement negotiations, to pay for work previously agreed at the negotiating table and done since November of 2003, and to pay for discussions with federal representatives since November of 2003. George Arcand and I have talked about this matter several times pursuant to our February 2nd meeting and I look forward to receiving confirmation of funding required to enable the Lubicon people to fully participate in settlement negotiations with the government of Canada.

Sincerely,



Bernard Ominayak
Chief, Lubicon Lake Indian Nation

Ministre des Affaires indiennes et
du Nord canadien et interlocuteur fédéral
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and
Northern Development and Federal Interlocutor
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

JAN 16 2008

Chief Bernard Ominayak
Lubicon Lake Indian Nation
PO Box 6731
PEACE RIVER AB T8C 1S5

Dear Chief Ominayak:

This is in response to your correspondence of May 8, 2007, addressed to my predecessor, in which you respond to his suggestion to hire a Federal Representative to meet with representatives of the main parties (Lubicon Lake Indian Nation, Alberta and Canada) to the negotiations to determine the chances of a settlement. You mentioned in your letter that you did not agree that the proposed candidate for the position, Mr. Ken Boutillier, is an independent expert, given his prior involvement with the Lubicon file as an employee of the Alberta government.

I have given your comments full consideration, and would like to inform you that I am proposing to enter into a contract with Mr. Michael Coyle to act as my Federal Representative to carry out the work referred to above. I am assured that Mr. Coyle has had no involvement with your file. I am attaching a short biography for your information.

In keeping with my predecessor's commitment to you in his March 30, 2007, letter, I am prepared to share the recommendations Mr. Coyle presents to me as a result of his discussions with the parties. Please let me know if you are in agreement with my appointment of Mr. Coyle as Federal Representative, and whether you will participate in the proposed process.

I look forward to your response.

Sincerely,

Chuck Strahl

Encl.

Canada

Lubicon Lake Indian Nation

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February 6, 2008

The Hon. Chuck Strahl
Minister of Indian and Northern Affairs
Government of Canada
Ottawa, ON K1A 0H4
Fax: 613-996-9955

BY FAX

Dear Mr. Strahl:

Thank you for your letter of January 16, 2008 responding to the letter I sent to Mr. Prentice on May 8, 2007. I apologize for not responding to your letter sooner but it did not arrive until January 30th and the Lubicon people have been very busy trying to deal with pressing problems in our community due in no small measure to -40° plus temperatures combined with the lack of basic services about which I wrote you last week.

You have apparently been misinformed about the Lubicon position on Mr. Prentice's proposal to appoint Mr. Boutillier. While we don't consider Mr. Boutillier to be an independent expert upon whom the parties might rely for an unbiased assessment of the chances for achieving a settlement of Lubicon land rights, we did not take issue with the appointment of Mr. Boutillier but with the mandate Mr. Prentice was proposing to give to Mr. Boutillier.

Mr. Prentice and I met in Calgary on February 2, 2007 to discuss recommencement of Lubicon land negotiations. He and I did not agree, as I made clear in my May 8th letter, to the appointment of "an independent expert to determine the chances of a settlement". We agreed that Mr. Prentice would appoint a federal negotiator to negotiate a settlement of Lubicon land rights. (A copy of my May 8th letter to Mr. Prentice is attached for your convenience.)

During the meeting on February 2nd Mr. Prentice put forward the names of four possible federal negotiators, including Mr. Boutillier. I told Mr. Prentice, and I say to you now, that the Lubicon people are prepared to negotiate with whomever the federal government appoints -- including Mr. Coyle -- just as long as the federal negotiator is given a mandate to negotiate all outstanding Lubicon settlement issues including self-government and financial compensation. (In this regard I would point out that self-government and financial compensation have both been on the table for negotiation as part of any settlement of Lubicon land rights since at least the early 1980's; that then Indian Affairs Minister David Crombie agreed to their inclusion as settlement items in 1984; that they were both included as part of the discussions with Mr. Fulton in 1985-86; that in November of 1988 Prime Minister Mulroney's Chief of Staff Derek Burney agreed in writing that self-government and financial compensation would be included as issues to be settled as part of any settlement of Lubicon land rights, and that both self-government and financial compensation were demonstrably on the agenda for negotiation from the very beginning of the last round of Lubicon land negotiations.)

Mr. Prentice responded to my comments on the need for a federal mandate to negotiate all outstanding issues by telling me that he didn't believe in mandates. Instead he proposed to appoint a federal negotiator both parties could trust to see what kind of agreement could be reached and then, assuming agreement could be reached, he said he would recommend it to Cabinet. He said that he'd talk to his proposed candidates for federal negotiator over the coming weekend and then phone me back the following week about proceeding with negotiations.

I did not hear from Mr. Prentice the following week but I did receive a phone call from George Arcand, Director General of the Alberta Regional Office of Indian Affairs, who had attended the February 2nd Calgary meeting with Mr. Prentice. Mr. Arcand offered me Mr. Prentice's apologies for not phoning as promised explaining that Mr. Prentice had not phoned because Mr. Prentice had been unable to reach everybody to whom Mr. Prentice wanted to talk.

On April 18, 2007 I received the attached letter from Mr. Prentice dated March 30, 2007 in which Mr. Prentice proposed to give Mr. Boutillier a 45 day contract "to meet with representatives of the (unspecified) main parties to the negotiations to determine the chances of a settlement". It was this April 18th letter from Mr. Prentice to which I was responding in my letter of May 8, 2007.

In my May 8th response to Mr. Prentice I reiterated the Lubicon position that the Lubicon people are prepared to meet with whomever the federal government sends to the table to negotiate all outstanding settlement issues. I indicated that neither Canada nor the Lubicons have the option of not seeking a settlement of Lubicon land rights. I pointed out that Canada has a constitutional obligation to resolve the unsettled issue of aboriginal land title in Lubicon Territory which Canada cannot defer because the aboriginal and land rights of the Lubicon people are being abused and, in addition to having exclusive constitutional responsibility for dealing with aboriginal land rights, Canada has a constitutionally mandated fiduciary responsibility to ensure that the aboriginal and land rights of the Lubicon people are respected. On the Lubicon side, I said, Lubicon leaders have a responsibility to our children and grandchildren to try and achieve a satisfactory settlement of Lubicon land rights as quickly as possible. I said the Lubicon people therefore trust that any federal representative will be prepared to explore how, not if, a mutually acceptable settlement of Lubicon land rights can be achieved.

Lastly, as I indicated in my May 8th letter to Mr. Prentice, the Lubicon people will require financial resources to participate in settlement negotiations, to pay for work previously agreed at the negotiating table and done since November of 2003, and to pay for on-again off-again discussions with federal representatives since November of 2003 -- including the cost of participating in the February 2nd meeting with Mr. Prentice in Calgary. Mr. Prentice and I discussed this matter during our meeting on February 2nd and Mr. Prentice told me to discuss the question of costs with George Arcand. George Arcand and I have discussed this matter several times since the February 2, 2007 meeting and, concurrent with appointment of a federal negotiator, the Lubicon people will require financial resources to enable the Lubicon people to participate fully in settlement negotiations with the government of Canada.

Sincerely,

ORIGINAL SIGNED BY

Bernard Ominayak
Chief Lubicon Lake Indian Nation

Ministre des Affaires Indiennes et
du Nord canadien et interlocuteur fédéral
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and
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Ottawa, Canada K1A 0H4

078 29 2008

Chief Bernard Ominayak
Lubicon Lake Indian Nation
PO Box 6731
PEACE RIVER AB T8S 1S5

Dear Chief Ominayak:

This is in response to your correspondence of February 6, 2008.

Thank you for clarifying your position regarding the exercise proposed in my January 16, 2008 letter. It is now clear that you are not interested in participating in the exercise to be led by Mr. Coyle to determine whether a settlement is possible.

There is another issue that I would like to clarify. Your letter seems to imply that self-government and compensation are no longer part of the federal mandate, when you say that "... the Lubicon people are prepared to negotiate with whomever the federal government appoints ... as long as the federal negotiator is given a mandate to negotiate all outstanding Lubicon settlement issues including self-government and financial compensation." I agree with your statements regarding mandates in the 1980s that included self-government and compensation. These issues have always been, as you point out, and continue to be part of the federal mandate. It is not accurate to say that the Government of Canada's mandate does not include self-government and compensation because the mandate is not able to satisfy the demands of the Lubicon people on those issues. As you state, "... both self-government and financial compensation were demonstrably on the agenda for negotiation from the beginning of the last round of Lubicon land negotiations." Those issues were discussed for several months during the last round of negotiations, up to the point where it became clear that both the federal and provincial mandates were not able to meet the demands of the Lubicon people.

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- 2 -

As my predecessor informed you in his August 18, 2006 letter, I also find the Government of Canada's offer to be fair, reasonable, and made in good faith to the Lubicon people to fulfill the Lubicon's outstanding treaty entitlement. I believe the offer also provides the Lubicon people with a means to realize their self-government objectives.

Thank you for providing me with a response, albeit a rejection, on my proposal to have an independent representative explore the possibility of settlement. If you should change your mind in the future, please do not hesitate to contact me and I will give the proposal further consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Strahl". The signature is written in a cursive style with a large, prominent loop at the end.

Chuck Strahl

Lubicon Lake Indian Nation

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May 15, 2008

The Hon. Chuck Strahl
Minister of Indian and Northern Affairs
Government of Canada
Ottawa, ON K1A 0H4
Fax: 819-953-4941 & 613-944-9376

BY FAX

Dear Mr. Strahl:

Thank you for your letter dated April 29, 2008 responding to my letter of February 06, 2008. I received your April 29th letter on May 07th.

Despite both of our efforts to clarify our respective positions, I am concerned that we may be miscommunicating.

On February 02, 2007, Mr. Prentice agreed to appoint a federal negotiator to settle Lubicon land rights. On the question of whether that negotiator would have a mandate to negotiate all outstanding settlement issues including self-government and financial compensation, Mr. Prentice said he didn't believe in mandates. Instead he proposed to appoint a negotiator both parties could trust to see what kind of agreement could be reached and then, if agreement could be reached, Mr. Prentice said he would recommend it to Cabinet. We agreed to proceed as Mr. Prentice proposed.

On April 18, 2007 I received a letter from Mr. Prentice dated March 30th following up on our February 02nd agreement. Mr. Prentice proposed to give Mr. Boutillier a 45-day contract "to meet with representatives of the (unspecified) main parties to the negotiations to determine the chances of settlement". This seemed to be a different thing than appointing a negotiator to see what kind of agreement could be reached and I responded accordingly. However it occurs to me in retrospect that maybe Mr. Prentice was just using different words to express the proposal he'd made on February 02nd to appoint someone both parties could trust to see what kind of agreement could be reached and then, if agreement could be reached, that he'd recommend it to Cabinet. We could certainly agree to putting a time limit on reaching agreement since all of the required technical work has long since been done and we've said many times -- as have some members of the federal negotiating team -- that agreement could be achieved in six weeks if both levels of Canadian government would simply honor hard-won agreements already made.

I wrote back to Mr. Prentice on May 08, 2007 indicating that the Lubicon people are prepared to meet with whomever Mr. Prentice appointed to try and resolve all outstanding settlement issues. However, I said, the Lubicon people are not prepared to have some supposedly uninvolved independent expert determine whether or not settlement is possible, and certainly not someone who had long and contentious involvement in the Lubicon situation at a senior level with the province. I said the Lubicon people therefore trust that the appointed federal representative will be prepared to explore how, not if, a mutually acceptable settlement of Lubicon land rights can be achieved.

You and I have continued this discussion in your letter of January 16, 2008 -- in which you proposed to appoint Mr. Coyle as someone who has not had previous involvement with the file -- and in my response of February 06th, in which I reiterated the Lubicon position that the Lubicon people are prepared to meet with whomever you send to the table to deal with all outstanding issues. That brings us to your letter of April 29th in which you conclude that the Lubicon people "are not interested in participating in the exercise to be led by Mr. Coyle to determine whether a settlement is possible."

Maybe we are. It depends on the nature of the exercise you're proposing. The key is whether you're proposing to have your representative meet with us charged with trying to achieve agreement within a prescribed period of time, or if you're proposing to have a supposedly uninvolved independent person characterize the positions of the parties and draw conclusions on whether, in that person's judgment, the positions of the parties are reconcilable. The Lubicons are prepared to participate in the former with whomever you appoint. The later frankly looks more like a political exercise to try and justify and rationalize not even trying to achieve settlement. (In this last regard we have been told many times, including by departmental officials, that some departmental officials try to attribute lack of settlement to the situation being insoluble rather than to their own attitudes, ineptitude and intransigence. The last federal negotiator appointed by the previous government, for example -- as other members of the federal negotiating team can confirm -- caused negotiations to go on interminably by bitterly characterizing each negotiated compromise as a personal defeat and regularly seeking to go back and renegotiate issues previously agreed.)

That leads me to the issue of mandate where you say the issues of self-government and financial compensation have "always been...and continue to be part of the federal mandate", and that they "were discussed during the last round of negotiations, up to the point where it became clear that both the federal and provincial mandates were not able to meet the demands of the Lubicon people". I take at face value that's what you've been told, and Messrs Prentice, Scott and Mitchell before you, but, as can easily be documented, it's not factually accurate. Negotiations didn't end when it became clear that the federal and provincial mandates were not able to meet the demands of the Lubicon people. Negotiations ended when federal negotiators refused to discuss self-government as part of a settlement of Lubicon land rights saying it was beyond their mandate, and they brought discussions on financial compensation to an end by first asking the Lubicons to table a bottom line figure rather than pursuing discussion of a substantive basis for financial compensation, and then by insisting on using the requested bottom line as the starting point for negotiation of financial compensation and refusing to discuss anything else. That's not negotiation of the issues. That's dictating what will and won't be considered -- contrary to what had been agreed in advance -- and refusing to discuss anything else.

As I indicated in my letter of February 6th the Lubicon people are prepared to meet anytime with whomever the federal government sends to the table -- including Mr. Coyle -- to try and achieve settlement of Lubicon land rights. Neither Canada nor the Lubicons can responsibly refuse to pursue a settlement of Lubicon land rights, especially given growing tensions resulting from increasing resource company pressure to proceed in unceded Lubicon Territory.

Sincerely,



Bernard Ominayak
Chief Lubicon Lake Indian Nation