

OIL AND LUBICONS DON'T MIX: A LAND CLAIM IN NORTHERN ALBERTA IN HISTORICAL PERSPECTIVE

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Abstract / Resume

The author reviews the position of the Lubicon people of northern Alberta in their struggle for recognition as a people. She also examines the different and changing positions of the federal and provincial governments since the 19th century on the right of the Lubicon to determine their own membership and to receive Reserve lands.

L'auteur réexamine la situation des Lubicon du nord d'Alberta dans leur lutte de reconnaissance comme nation. Elle examine aussi les positions différentes et variables des gouvernements fédéral et provincial depuis le XIX^e siècle sur le droit des Lubicon de déterminer leur appartenance à une Réserve et de recevoir les terres de cette Réserve.

Introduction

All Native groups in Canada have had their land base diminished through the years, while some are still fighting for recognition of their homeland. One such group is the Lubicon Lake Cree Band of Little Buffalo, Alberta. It was 1899, almost one hundred years ago, when a government party visited northern Alberta to make arrangements with the local residents for large land surrenders under Treaty No. 8. Some of these residents were never contacted and continued to live in their traditional manner. With the liquid gold rush of the 1970s, these treaty-less people were overwhelmed with the influx of developers who were equally convinced of their right to use the land. This paper looks at the Lubicon struggle with two levels of government and with developers vying for the oil-rich land which the Lubicon consider theirs. In the process, this study will attempt to provide answers to some fundamental questions relating to the Lubicon: Is there any foundation to their claim? What is there about the Lubicon case that has attracted so much public attention? What makes them a precedent?

There are two primary reasons that attract historians to the Lubicon cause. First, the band provides a contemporary case study of attitudes and processes that have dominated non-Native relations in Canada since the early days of European settlement.¹ Has there been a significant evolution or progression in this area, or are the Lubicon experiencing a common phenomenon encountered by other Native groups? Second, there is a lack of solid academic exploration of Lubicon history. While the band's story was often featured on the front page of major newspapers, these reports were generally done without proper historical reference or analysis. By explaining the specifics of the Lubicon case within a historical framework of dominant attitudes, the present paper attempts to offer some insight into the development of government-Native relations in Canada.

Treaty No. 8

On 22 May 1899, the Honourable David Laird, Lieutenant-Governor of the Northwest Territories, and a group of his staff, boarded a train in Winnipeg for Edmonton. From there, they loaded thirteen wagons with provisions and travelled north toward Lesser Slave Lake, the predetermined location for their first meeting. Upon their arrival, on 19 June, preparations were made for the eventful occasion, and on the following day Laird addressed the assembled crowd:

Red Brothers! We have come here to-day, sent by the Great Mother to treat with you, and this is the paper she has given us, and is her commission to us signed with her Seal, to show

we have authority to treat with you...I have to say, on behalf of the Queen and the Government of Canada, that we have come to make you an offer... As white people are coming into your country, we have thought it well to tell you what is required of you.... The Queen owns the country, but is willing to acknowledge the Indians' claims, and offers them terms as an offset to all of them... (Mair, 1908:56-59).

Thus began the ceremonies which led to the signing of Treaty No. 8, Chief Keenooshayo and Chief Moostoos agreeing on behalf of the Crees present. This first step was considered the most important by the treaty party and scrip Commissioners, for the remaining work was seen as merely obtaining "adhesions" to the treaty from other groups in the territory (*Ibid.*:64). The Treaty Commission split into small groups and contacted some Beavers at Fort Dunvegan, the Crees and Beavers at Fort Vermilion and Little Red River, the Crees and Chipewyans at Fort Chipewyan, a group at Great Slave Lake, some Chipewyans at Fond du Lac, other Chipewyans and Crees at Fort McMurray, and some Crees at Wahpooskow. By the end of July the Commissioners had completed their task and headed home. They were aware that not all people were reached, and, accordingly, a second Commission was sent the following summer to meet with those originally missed. This extra trip managed to secure the adhesion of another 1,200 (Mair, 1908:66; and see Madill, 1986:48). Despite these efforts by the Canadian government, however, certain groups living in outlying areas were never visited by treaty officials. Commissioner James A. Macrae noted in his report of 11 December 1900 that

There yet remains a number of persons leading an Indian life in the country north of Lesser Slave lake, who have not accepted treaty as Indians, or scrip as half-breeds, but this is not so much through indisposition to do so as because they live at points distant from those visited, and are not pressed by want. The Indians of all parts of the territory who have not yet been paid annuity probably number about 500... (Canada, Treaty No. 8, 1966:21).

Among those were the people of the Lubicon Lake Cree band.

Nearly one hundred years after Laird's initial visit to the Peace region, the Lubicon Lake band has still not "adhered" to Treaty No. 8. According to the band, it attempted contact on several occasions with the Department of Indian Affairs and Northern Development (DIAND), but these early efforts were unsuccessful. Upon their arrival at Whitefish, for example, the Indian Agent put their names on the Whitefish Band list, give them five dollars each, and send them off. The agent did not recognize the Lubicon as a separate and distinct group, but at that time they were not too concerned

by the miscommunication. In the early part of the 20th century, the Lubicon lived relatively unmolested by outsiders. With the advent of the Great Depression, however, rumours were heard that White people would come in hordes to live in the bush. Fearing that they might lose their land, the Lubicon say that they sent a petition to the federal government in 1933 requesting a land settlement, resulting in a visit from two government officials who recognized the community as a separate band and promised to establish a Reserve. The band also claims that government officials recommended a Reserve of 25.4 square miles, based upon a census count of 127 people present, at one square mile for every five, as stipulated in the terms of Treaty No. 8. The Lubicon selected a portion of land at the western end of Lubicon Lake for their Reserve, a selection that was approved by both levels of government by 1940. Alberta set aside the agreed portion of land for the proposed Reserve, but the federal government had first to conduct a survey of the area before a Reserve could be established. That survey has yet to take place (Lubicon Lake Indian Band Land Claim, 1987:2).

The outbreak of World War II might have disrupted government intentions to deal properly with the Native population, but it did not prevent some bureaucrats from causing further damage. In 1942, for example, Malcolm McCrimmon of Indian Affairs began removing from treaty lists names of those who could not prove their "pure Indian blood." From a list of 154 Lubicons, he removed 90 members at the outset, paying treaty annuity to the remaining 64 only. All others in the group were deemed "non-Indians" or "half breeds" (*Ibid.*; see also Goddard, 1985:73). This move was especially disastrous for the Lubicon because most of their registered members were not added to any membership list until the 1920s and 1930s, and more than half their people had never registered at all. People not registered were ineligible to receive Band funds distributed by DIAND. In 1939, during the government recognition of the Band's existence, all parties were aware that many Lubicon people were not on any membership list. It was also known that many more Lubicons were out in the bush and, therefore, were unable to register at the time the official Band list was created. Officials acknowledged the problem during that visit and made allowances for the "absentees" to be added later to the Band list (Lubicon Lake Indian Band Land Claim, 1987:3). Hence, the department's 1942 policy and decision to trim an already incomplete Lubicon Band membership list was contrary to the 1939 agreement. The government, for its part, acted in response to pressures of rising costs in DIAND administration. Following an internal department study conducted in 1942 on Band lists of the Lesser Slave Lake region, it was found that the number of additions to those Band lists was

too extensive. As a result, the department discharged 700 individuals from the treaty lists on the grounds that their parents or grandparents were either White or Métis (Madill, 1986:89).

The Lubicon, and other Bands affected by the removals, protested the government's actions, and DIAND responded by commissioning a study to look into the situation. On 30 June 1943 the report by Judge McKeen was released; it did not applaud the government's stand:

...Your instructions to me...say that the facts are relatively simple and will not require any argument of those who are protesting against the removals...This may be the opinion of the Department but it is not mine, after reading the Indian Act and Treaty No. 8, then a book "Treaty of Canada with the Indians" by Morris (who was at that time Lt. Gov. of Manitoba and one of the Treaty 8 Commissioners), the Domestic Relations Act of Alberta and the Criminal Code... Mr. McCrimmon has...followed the principles governing ineligibility... signed by Deputy Minister Charles Campbell...(however)...with all due respect...I cannot concur (with the removals) when I study Treaty No. 8 and previous commitments made by various Commissioners appointed by Canada and acting for Canada.²

The controversy continued and the government set up a judicial inquiry in 1944. Judge W.A. Macdonald, head of the new inquiry, not only agreed with the previous findings, but recommended that the department reinstate most of the Lubicon Lake Band members struck from membership lists. His judgement reflected an awareness of the complexity of the issue and recommended a more humane treatment of all Native peoples concerned with the controversial Band list removals.

It is well known that among the aboriginal inhabitants there were many individuals of mixed blood who were not properly speaking Halfbreeds. Persons of mixed blood who became identified with the Indians, lived with them, spoke their language and followed the Indian way of life, were recognized as Indians. The fact that there was white blood in their veins was no bar to their admission into the Indian bands among whom they resided

When Treaty No. 8...was conducted in 1899, a large proportion of those admitted into treaty at that time were of mixed blood.... I am quite unable to reconcile this definite pronouncement with the view that individuals of mixed blood who have been in treaty for a great many years can now be removed from the Band rolls and from the Reserve on which their lives have been spent, on the ground that they are not now and never have

been Indian.

It seems to me that the meaning of the word `Indian' is sometimes unduly restricted

Moreover, argued Judge Macdonald, whenever possible, Treaty No. 8 should be interpreted as the Aboriginal people involved understood it:

An Indian treaty... should not be construed according to strict or technical rules of construction. So far as it is reasonably possible, it should be read in the sense in which it is understood by the Indians themselves. When Treaty No. 8 was signed the Indians were well aware that the Government took a broad and liberal view with respect to the class of persons eligible for treaty. Many of them taken into treaty at that time were themselves of mixed blood. They knew that individuals of mixed blood who had adopted the Indian way of life were encouraged to take treaty. They cannot reconcile the removal from the band rolls of a large number of individuals of mixed blood who have been in treaty for many years, with their understanding of the situation as it existed when the treaty was signed.

The Indian Act is loosely drawn and is replete with inconsistencies. I venture to say that flexibility rather than rigidity and elasticity rather than a strict and narrow view should govern its interpretation.³

Of the 294 people which the judge suggested be reinstated to all the Bands affected, the department only accepted 129. Judge Macdonald heard 49 appeals from the Lubicon Lake Band and he recommended the reinstatement of 43. McCrimmon agreed to reinstate 18 (Lubicon Lake Indian Band Land Claim, 1987:5). The stalemate continued until 1952, when, on 17 April, the Director of the Technical Division of Provincial Lands and Forests [Alberta]wrote to DIAND inquiring about the proposed Reserve:

Due to the fact that there are considerable inquiries regarding the minerals in the (Lubicon Lake) area, and also the fact that there is a request to establish a mission at this point, we are naturally anxious to clear our records of this provisional reserve if the land is not required by this Band of Indians.⁴

This letter re-opened an apparently dormant case within DIAND, for the Departmental Supervisor of Reserves and Trusts was suddenly moved to get the Alberta Regional Supervisor to act:

You will recall that in 1946 C.D. Brown surveyed six parcels of land...for purposes of Indian Reserves...On his program for the same year was a survey at Lubicon Lake but it is our

understanding that he was not able to undertake this survey during the field season and it was left over until another year. In so far as we can tell from our records, *this proposed reserve seems to have been forgotten* since then and our attention has (now) been drawn to it...I shall be pleased if...you can advise whether you consider there is (still) a need of a Reserve at this point, for if so, we will give consideration to having it surveyed, possibly this year, and if not, certainly the following year.⁵

The local Indian Agent was thus asked to look into the situation, but he reported that the original site for the Lubicon Lake Band Reserve was too isolated and would be inconvenient to administer. He was then instructed to meet with the Band to select a new location for the Reserve, but the Band refused because the new proposed site was located outside the area traditionally used by them. A second meeting was set up for the same purpose, and the Indian Agent was informed by his supervisor that "Regardless of the result of such a meeting, I certainly recommend the procuring of land (at a more convenient site)."⁶ At stake here was the question of mineral rights, which federal officials had not mentioned during talks with the Lubicon. In fact, the Alberta Regional Supervisor indicated the federal government's ambivalence on this matter:

It is recommended that the twenty-four sections of land set aside for a Reserve at Lubicon Lake be exchanged for (a more convenient site)...I interviewed the Deputy Minister of (Provincial) Lands and Forests...(and)...he stated that he did not have any objections to the transfer though there was no assurance that the mineral rights could be included with (the more convenient site)...If this Reserve (at Lubicon Lake) is retained, the Band would have the mineral rights...I would recommend the exchange be made even if the mineral rights cannot be guaranteed (at a more convenient site).⁷

Yet another meeting was held between the local Indian Agent and the Band on 4 June 1953, the former's report indicating the impasse: "I explained to Band members present that it would be impossible to administer a Reserve at Lubicon Lake because of the lack of transportation, but the members continued to ask for the Reserve which has been set aside for them by the province of Alberta" (Lubicon Lake Indian Band Land Claim, 1987:8). Later that year, on 22 October 1953, the province requested a clarification of the federal government's position:

It is some years now since (the Lubicon Lake site was provisionally reserved)...(and)...it would be appreciated if you would confirm that the proposal to establish this reservation has been abandoned. If no reply is received within 30 days, it

would be assumed that the reservation has been struck from the records.⁸

According to the Lubicon, the federal government did not respond to this request. Instead, officials encouraged some Band members to apply for enfranchisement, transferred the names of some Lubicons to other Band membership lists, and questioned the existence of the Band itself (Lubicon Lake Indian Band Land Claim, 1987:10-12). In the meantime, the Alberta Regional Supervisor requested the assistance of the Departmental Regional Supervisor, whose staff was instructed to

... consult the appropriate files and advise whether action was taken by the Department to officially establish (the Lubicon Lake Band) as a Band, for at this time any such action appears rather shortsighted, and if this group was never established as an official band it *will serve our purpose very well at the present time.*⁹

The Lubicon persisted, although, admittedly, they have been affected by numerous setbacks as the Band readily admits:

We still have no reserve lands. Some of our Band members have never been added to the Treaty list. Others were removed and never reinstated. Some Band members have been enfranchised. And some Band members have had their names transferred to the membership lists of other Bands, in spite of the fact that they were born and raised in our community, in spite of the fact that they have lived all their lives in our community, in spite of the fact that they have never considered themselves to be members of the Bands on whose membership lists their names appear, and in spite of the fact that they have never been considered to be members of those other Bands by the legitimate members of those other Bands (Lubicon Lake Indian Band Land Claim, 1987:12-13).

Status and Membership in Canada

The Lubicon struggle with authorities who questioned their Band status corresponds with the history of Band definition by the Canadian government. While officials tended to be liberal in defining “band” and “Indian” in the mid-19th century, restrictions were added later, perhaps reflecting a growing sense of limited resources coupled with growing demands for the land. For example, in 1850 an Act was passed in Lower Canada which defined “Indians” as follows:

- First** -All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.
- Secondly** -All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.
- Thirdly** -All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such:
And
- Fourthly** -All persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants (Smith, 1975:40).

This legislation did not define “Body,” or “Tribe” or “Band,” apparently accepting members “reputed” to belong to such groupings as enough evidence. Also, a relatively broad definition was applied to determine who was an “Indian,” including “All persons” intermarried with or adopted by “such Indians.” A year later, however, another Act was passed to repeal this earlier legislation, stipulating that people to be considered “Indians” now had to have some “Indian” blood (*Ibid.*:47-48). At this point, all non-“Indian” people lost their “Indian” status, except for women marrying “Indian” men and their descendants, whereas before both women and men married to “Indian” persons were also considered “Indian.”

These earlier Acts were applicable to a specific territory, namely Lower Canada, but they were to influence later legislation of a federal nature. Following Confederation, politicians grappled with the need for a national “Indian” policy and created “An Act to Amend and Consolidate the Laws Respecting Indians (The *Indian Act*, 1876).” For the first time in the history of the indigenous population in the country, persons of one hundred percent “Indian” blood could be legally considered “non-Indian.”

The *Indian Act of 1876* provided a more detailed definition of terminology applied to Native people, starting with the “Band.” In order to be considered a “Band” under Canadian law, the group had to have some connection with the federal government, either through the Reserve system or through treaty payments. Autonomous bands, living without government control over their lands, or whose affairs were not “managed by the Government of Canada,” were labelled “irregular bands” (*Ibid.*:87). The previous legislation discussed earlier did not apply to groups outside Lower Canada, but the *Indian Act of 1876* specifically stated that the Act “shall

apply to all the Provinces, and to the North West Territories, including the Territory of Keewatin." In 1880, however, Prime Minister John A. Macdonald said that the " `wild nomads of the North-West' could not be judged on the same basis as the Indians of Ontario" (Ponting and Gibbins, 1980:16; see also Tobias, 1983:45). While that might have been the case in 1880, historians generally agree that the 1876 *Indian Act* set the tone for legislation concerning all Native people in Canada for the next hundred years (Ponting and Gibbins, 1980:8-12; Frideres, 1983:30; Tobias, 1983:44).

In addition to the attempts at defining a "band," the *Indian Act of 1876* also provided more restrictive designations to determine who was an "Indian," provisions that would greatly effect the make-up of a Band: "The term `Indian' means...Any male person of Indian blood reputed to belong to a particular band...Any child of such person...Any woman who is or was lawfully married to such person" (Smith, 1975:87-88). With this new legislation siblings of identical ancestry could be divided by the federal government into two categories, "Indian" and "non-Indian," depending on the gender of the individual and the ethnicity or racial category of her/his marital partner. Children born out of wedlock could also be considered "non-Indian" regardless of the "Indianness" of the parents. This legalistic approach toward defining a group of people could reach absurd proportions, as will be seen later with the Lubicon. Suffice to say here that the *Indian Act* and its numerous amendments were bound to cause serious disruptions within existing Bands because their membership was no longer to be determined along community, familial, or traditional ties, but by whether the individual was female or male, and whether the person was born before or after certain legislation. Significantly, the 1876 *Indian Act* also stated that "the term `person' means an individual other than an Indian...." (*Ibid.*:89).

The 1876 *Indian Act* had numerous revisions and amendments, but these did not change the definitions of "Indian," nor was Band formation clearly addressed. It was not until 1951, with "An Act Respecting Indians (The *Indian Act*, 1951)," that the government tackled the difficult terminology used for Canadian Indians. The 1951 *Indian Act* indicated that a "Band" was a body of Indians that had received official recognition by the Governor in Council (*Ibid.*:154). This same *Act* also stipulated that " `member of a band' means a person whose name appears on a Band List or who is entitled to have his name appear on a band List." Thus, for the first time reference was made to a "band list" in order to determine who is a member of a recognized Band, a register maintained by the government (*Ibid.*:156). Furthermore, the *Act* gives the government a broad range from whence members might be deleted from a Band list, including: "Where the name of a male person is included in, omitted from, added to or deleted from a Band

List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be.”

The 1951 *Indian Act* stressed that “Indian” descent was to be determined through the male line, and only as a result of a legitimate relationship. Although an illegitimate child was eligible to be added to a Band list, the 1951 *Act* indicated that this provision could only apply “to persons born after the 13th day of August 1956” (*Ibid.*:159).

Not only did the 1951 *Indian Act* stipulate who could be included on a Band List, it also indicated who was not entitled to be registered, including “a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons [as described above]” (*Ibid.*:158). Again, depending on the date of a child's birthday, sisters and brothers could be legally appropriated a different ethnic stamp. More importantly, perhaps, families and Bands would lose the corresponding benefits. Not surprisingly, critics have generally denounced government attempts to “amend” the *Indian Act*:

The astonishing feature of the amendments up to 1950 is how little, despite their frequency, they sought to accomplish. They were always preoccupied with details and never contradicted the basic rationale of the Indian Act, which demanded “civilization” and responsibility from the Indian population while denying them control over the forces affecting their lives (Bartlett, 1983).

This perception might also apply to the general policy after 1950, especially in relation to the wranglings over membership lists. The Lubicon were still struggling with this issue in the 1980s, and their membership problems followed a similar path to that taken by the evolution of the *Indian Act*. As discussed earlier, upon first contact with government officials the Lubicon were given fairly liberal assurances regarding their membership list. Allowances were made for those who were away during the 1939 census visit and promises were made about their future inclusion in the official list made at that time. However, the Department did some reevaluation in the 1940s on Bands and Band lists, at a time when land was once again in demand following the return of soldiers from fighting in the Second World War. The 1951 *Indian Act* was the most restrictive legislation to-date dealing with Native people, limiting who was legally “Indian,” and, subsequently, who could be registered on a Band List. At that time, as has been shown, officials attempted to question the Lubicon Band's existence. The Lubicon were not officially recognized as a Band until 1973 by Order-in-Council. As far as the Lubicon are concerned, however, they have always

been a band. Yet, the “official” number of Lubicons was further reduced by the 1951 *Indian Act*. One member family even had their offspring divided in half. Six who were born prior to the effect of the 1951 legislation were considered “Indians” by the government, while six born after the new policy were treated as “non-Indians,” though all twelve children had the same mother and father.¹⁰ Despite the government categories, however, the Lubicon lived together as community, self-sufficient and relatively unmolested by officialdom. By the 1970s, this, too, would change.

Alberta Policies

Although the Lubicon struggled with the Canadian government at least since 1939, it was not until the 1970s that their battle became more pressing. Prior to that time the Lubicon Lake area was difficult of access and there was little intrusion from outsiders. In 1979, however, the Alberta government completed construction of an all-weather road through the region, which brought an influx of oil companies with their heavy exploration equipment; by 1982 there were 400 oil wells within a fifteen mile radius of the Lubicon band community. The road provoked an incident with little precedent in Alberta legal history. Fearing the consequences that its construction would entail, the Lubicon and some other affected groups, calling themselves the Alberta Isolated Communities, sought to file a caveat against the Alberta government in 1976. The purpose of this procedure was to halt construction of the road by officially declaring their claim to 33,000 square miles of land in the area, based upon their unextinguished Aboriginal title. The provincial registrar refused the caveat request, forcing the Alberta Isolated Communities to seek court action. The provincial government in turn was granted a postponement on the case until a decision was rendered in a similar case in the Northwest Territories. Although the Aboriginal claimants lost their case in the Northwest Territories, the court indicated that the decision would have favoured the Native claim had the law in the Northwest Territories been written like the one in Alberta and Saskatchewan. The Alberta government took this cue and changed the pertinent legislation, making the changes *retroactive* to a date prior to the date on which the Lubicon filed for caveat. The court case of the Alberta Isolated Communities was dismissed in 1977.

This retroactive legislation caused an uproar. First introduced in the Alberta Legislature on 25 March 1977, the purpose of Bill 29, “The Land Titles Amendment Act, 1977” was “to clarify the interpretation of The Land Titles Act respecting the filing of caveats. It’s intended to be consistent with what the government and the legal community have always understood the

law to be in this area,”¹¹ explained Alberta’s Attorney General, James L. Foster. He further admitted that the Alberta government was compelled to make this change because of the recent court decision in the Northwest Territories.¹² The opposition reminded the provincial government of public concern over this issue, including an outcry from the Canadian Civil Liberties Association. The Alberta government received a request from the Alberta chapter of this body to make a submission on Bill 29 pointing out their misgivings, but the Attorney General felt that these apprehensions were somewhat misguided.¹³ On second reading of Bill 29 the Attorney General indicated once again the nature of the new legislation:

I should underline and emphasize, perhaps, that it is not the intention or scope of our land registry system to accommodate to the filing of caveats for which no certificate of title has been issued or is in the process of being issued. Indeed we felt it appropriate to clarify the law particularly with respect to Section 136, to ensure that the relationship of the caveator, or the applicant, was tied in some direct sense to the owners of the property or others who have interests in the property. Therefore we intend to make it clear with the amendments in this legislation, and particularly to ensure that no caveat can be registered for which no certificate of title has been issued.¹⁴

Since the Lubicon Band did not possess a “certificate of title” for their land, they were barred from filing a caveat, but Foster insisted that the notion that Bill 29 denied certain groups their rights was “completely inaccurate.” The amendments were related to “fileability,” and not to the question of land ownership. Interestingly, though, the Attorney General planned to implement an additional “clarification” in order to alleviate some concerns, “particularly to oil company interests and others” and dispel the doubts expressed “by the legal and the commercial communities.”¹⁵

The opposition declared that the enactment of Bill 29 was tantamount to a “black day” in the history of the province, for the government was showing a “disrespect for civil liberties in Alberta.” A Social Credit Member of the Legislature of Alberta (MLA), Walter A. Buck, was also concerned with the priorities in enacting Bill 29 which, he felt, defended the government interests of large groups with political and economic clout. Small groups like the Lubicon Lake Band did not have the resources to defend themselves, and to expect them to use the courts to protect their rights showed “callousness” and “indifference” toward the needs of minorities.¹⁶ Another MLA, New Democrat W. Grant Notley, pointed out some of the possible implications of retroactive legislation: “What we’re really saying... is that we have told the native people of Alberta, yes, go to the courts, but only if you lose. If we think we might lose, we’ll change the law retroactively.”¹⁷ Notley

was aware of the difference between a land claim and the filing of a caveat, but he also stressed that there was confusion between the filing of a caveat and a freeze on development, as the government suggested: "Little point in gaining land claims, if development has taken place without any consideration of the possible implications for the people living in the community."¹⁸

The government responded that the filing of a caveat only aided Aboriginal claims "in a harassing manner," and that the only thing the Native people would have achieved would be to cause "an embarrassment to the government." Furthermore, claimed Conservative MLA Leslie G. Young, to allow the caveat in question to go through would be to "destroy the land title system in this province," for the caveat would affect approximately 5,000 land holdings in the Peace region:

...had this application to caveat been successful...every title holder in the town of Peace River would have woken up one morning and found his title was clouded—that he had a caveat against it, couldn't get a mortgage and couldn't sell freely. Now I ask you: in that event, who are the powerless, who are the innocent? What is the nature of the question before us?¹⁹

The debate over the caveat revealed a real concern for the government: interference with development in northern Alberta. Faced with conflicting interests, the provincial government took a stand for the rights of those who had "some" right to the land. "I'm not concerned about those who want to claim the whole massive area in the north," said Independent MLA Gordon Taylor. In the government's arguments, emphasis was placed on the necessity of facilitating development rather than hindering it. The Lubicon caveat application was seen as a real threat to the land tenure system in the province, which provided for the "orderly transaction of land." Thus, "Bill 29 is intended to prevent abuse of the system of law which is the cornerstone of our society."²⁰ Nor was the government only worried about hampering development which appeared to benefit only certain groups of Albertans. Sensitive to criticisms of neglecting the Native cause, the provincial government responded that the new legislation was actually for their own good: "By ascension into law of this bill we will be assisting those native people in real need of our support, by indicating that we are prepared to accommodate their objectives under treaty and our obligations. We do not wish to inhibit their individual growth by curtailing total development of the north."²¹ The government, however, had its own ideas on what its obligations were to the Native population of the province. As one MLA stated, the purpose of the Alberta treaties was evidently "not to contain the development of the people; its intention was rather to create an orderly and just settlement of all the land."²² Consequently, the Alberta government had

established the Land Tenure Secretariat on 3 June 1975 to provide legal title to eligible people living on public land in northern Alberta, but officials saw a need to encourage “the individuals involved to develop the personal responsibilities inherent in land ownership.”²³

Criticism of the government's position was heard outside the Alberta Legislature. With only four members in the opposition, the Conservatives were confident in the House, but concerns poured in from across the province and the country, including petitions from citizens living in isolated communities, schools, and churches. The Alberta Human Rights Commission feared that the new legislation was discriminatory, and the Canadian Civil Liberties Association held public meetings to discuss the implications of Bill 29, including one meeting on 3 May 1977 at Garneau United Church, Edmonton. It was this gathering that particularly bothered the government of Alberta because some of the guest speakers, including journalist Pierre Berton, were “outsiders” fomenting discord in the province. “I know the civil liberties group from Ontario were in part behind it,” said the Attorney General. As a result, Taylor argued, the growing controversy over the legislation could be questioned and even dismissed:

... the Hon. Member for Spirit River mentioned we should be flattered because Pierre Berton came to Alberta to speak about human rights. Personally, I think there's plenty of human rights in the east he could speak against without shoving his nose into our business. The people of Alberta can handle their own affairs without interference from some arrogant radio man from Toronto. I resent him coming. I would wager—maybe I'm wrong—but I'd wager somebody paid his way. I would bet on it. When he pays his own way out here, I might have some reason to listen to what he has to say.²⁴

By the time the caveat controversy erupted, the Lubicon had learned that they could no longer ignore the troublesome signs on their horizon. Many Lubicon families moved five miles from their traditional area into Little Buffalo where their children could go to school. They would meet the new challenges with newly-acquired skills. As the Alberta government debated whether or not the Isolated Communities were being influenced by outside rebels, the Lubicon were grooming one of their own to lead them into the uncertain future. In 1978 Bernard Ominayak, 28 years old and with a grade 10 education, was elected to the Lubicon Council; two years later he became Chief of the Band.

Chief Ominayak

Referring to Chief Bernard Ominayak, one journalist said in 1988 that "it is hard to imagine today where the Lubicon Cree would be without him" (Goddard, 1988:43). Ominayak has not resolved the Lubicon dilemma, nor has he diminished the band's troubles, but he changed the character of the struggle. Once a small, unknown group of Native people in northern Alberta on the verge of losing their very identity, the Lubicon surfaced as a force to be reckoned with in the 1980s and in the process have gained worldwide respectability, albeit primarily from non-governmental and perhaps non-powerful groups and individuals. Still, it is almost certain to many observers that whatever happens to the Lubicon, they will not go down quietly. History will not bypass them as it did in 1899. It is difficult to determine whether it was Ominayak's leadership or a new sense of urgency felt by the whole band that gave the Lubicon a spark. Perhaps it was combination of both. Certainly, the 1980s ushered in new problems for the band that required concerted and deliberate action on the part of the Lubicon. Still, Ominayak is credited with bringing the Lubicon cause to the provincial, national, and even international limelight.

One of the effective strategies picked up by the Lubicon in the early 1980s, under the leadership of Ominayak, was to seek assistance outside the band. They realized that alone, they would be isolated and easily ignored by officials. United with other bands with similar problems, coupled with a broad-based support network, the Lubicon would have a better chance. The Lubicon hired James O'Reilley, a lawyer who negotiated an agreement with the government for the James Bay Cree. Advisers were also sought who had experience dealing with Native issues and the two levels of government. Next came the creation of a coalition of Native, labour, student and church groups across Canada and Europe who helped to raise the public's awareness of the band's plight and who provided support for the band's land claim. The Lubicons became a household name in Alberta, and Peter Big Head of the Blood Band in southern Alberta expressed a common view regarding the Lubicon's position: "The Lubicons are looked upon as the forerunners...They've opened the door. Indian people across Canada must stand firm for what belongs to them" (Fisher, 1988). Lawrence Courtoreille, Alberta Vice-President for the Assembly of First Nations, conceded that "People are looking toward Bernard as the new leader who can make changes...He is quiet, but he carries the power of his people" (*Ibid.*). With skilful use of political leverage, the band has gained a lot of positive media coverage. Through Ominayak, the Lubicon struggle gained credibility. Soft-spoken and unobtrusive in manner when addressing the

public, Ominayak does not forcibly demand anything or attack anyone. Perhaps this is one of the reasons he has succeeded in endearing his people to the Canadian public:

Unlike the band's lawyer and adviser, he is not given to fancy rhetoric or inflamed, passionate speeches Yet it is Ominayak who controls the situation, which has been growing increasingly volatile as more and more outside supporters arrive to take up the fight (Darkan, 1988).

Deliberately orchestrated or not, Ominayak is portrayed as the sensible, reasonable leader of a small group of Native people fighting for their very existence. Although he had to fight his own personal battles along the way,²⁵ he always managed to retain a certain amount of dignity. His lawyer, O'Reilley, and his adviser, Fred Lennarson, are both non-Native. They do the lashing at the government and developers, saying the things that might need to be said but that might make some people feel uncomfortable. The Lubicon are left squeaky clean. Whether this image was a result of a well-crafted plan might not be easily construed, but, either way, it has worked.

One of the ways that Ominayak succeeded in bringing the Lubicon claim to the fore might be his sense of timing. As it will be discussed later, he was able to maximize his opportunities for publicizing the Lubicon cause during the 1988 Winter Olympics, and the federal election in the fall of 1988. The Lubicon also maintained a sense that they went through all the proper channels, exhausted all the available routes to them, and were now at the mercy of the Canadian people. In their press releases, public statements and forums, the band briefly but assiduously recounted the history of the Lubicon, from their being overlooked by the treaty party in 1899—through no fault of their own, they point out—to the fact that they still have no Reserve while their livelihood has been basically destroyed due to the destruction of the environment by multi-national corporations. At a time when the environment has become a mainstream concern, how can the Lubicon lose the war for public approval?

Soon after he was elected chief, Ominayak was faced with the prospect of his Band losing their Reserve even before they received it. In 1981 the Alberta government proceeded with a plan to turn the region claimed by the Lubicon into a Provincial Hamlet. When the Band protested the move and refused to cooperate with officials, the provincial government demonstrated once again that it was sensitive to "outside" influence in the Lubicon case. Instead of addressing the criticism that surfaced regarding his Land Tenure Program from the Lubicon and other isolated communities, Municipal Affairs Minister Marvin E. Moore pointed out that those who had signed a petition rejecting the program had done so "with the advice of legal

counsel from Montreal,” and therefore were suspect.²⁶ Provincial officials insisted that the aim of the Land Tenure Program was not to undermine any land claim put forward by a Native group. “We established it so people who have been legally living as squatters on public land in Alberta in this day and age would have an opportunity to obtain title to that land, title they need for a variety of reasons.”²⁷ Interestingly, though, the government was not moved to provide “title to the land” to residents of the Lubicon area until the early 1980s when oil exploration was booming. Furthermore, the Lubicon resented the label of “squatters” in their own homeland.

The Legal Battle

If attempts to deal directly with the province were discouraging, the legal course proved equally demoralizing for the Lubicon Lake people. The band first approached the courts during the above-mentioned caveat application, which, as has been shown, did not result favourably for the Lubicon. Having failed at the provincial court level, they sought remedy through the federal court system in 1980, but this route also had its pitfalls. First, the band's action was continuously challenged by some of the defendants on procedural grounds. The province and oil companies argued that the federal court had no jurisdiction on what was to them a provincial matter. The court agreed. While the case against the federal government and the crown corporation, Petro-Canada, continued in federal court, a suit against the province and other oil companies was filed in provincial court. In the meantime, oil exploration and development continued in the band's traditional territory. The Lubicon, therefore, sought to obtain an injunction to temporarily halt the disruptive activities in the area pending a settlement of their land claims. This was the fourth court action by the band. The Lubicon filed for an interim injunction on 23 September 1982; the application was not heard until 26 September 1983. On 25 October 1983 lawyers on both sides completed their arguments, and judgement was rendered on 17 November 1983. The Lubicon's application was dismissed.

The crux of the band's argument in seeking the injunction was that “what was being destroyed by development activities was a whole way of life which could never be compensated or replaced with money” (Lubicon Lake Band, 1983:2). In order to prove this point, the Band presented affidavits from Lubicon Chief Bernard Ominayak and from prominent community elders, describing their traditional lands, the history of their people, their hunting and trapping activities, and the effect development had had on their livelihood. Affidavits were also submitted by Joan Ryan, Chairperson of the Department of Anthropology at the University of Calgary,

confirming the distinctiveness of the band's traditional way of life and the possible effects to their culture from oil-related activities; another affidavit from Ken Bodden, wildlife biologist with the Boreal Institute at the University of Alberta, described the band's hunting and trapping activities and related this to the economy of the community; an affidavit by Ben Hubert, a zoologist, showed the possible effects of oil related development on the animals in the band's traditional area; finally, affidavits were read from Gordon Smart, past Director of the Forest and Land Use Branch for the Alberta Department of Energy and Natural Resources, Peter Dranchuk, professor of petroleum geology at the University of Alberta, and Everett Peterson, a forest ecologist. Smart described everything from past, present, and future proposed development in the Lubicon area; Dranchuk discussed the types of development expected in the region; and Peterson gave an assessment of the effects development could have on land-vegetation and biological productivity, including the cumulative effects of development on hunting, trapping and fishing.

Lawyers for the provincial government and oil companies argued that the decrease in wildlife in the area was not due to development activities but to natural cycles of animals, a tick infestation, overtrapping, and decreased trapper effort. The band rejected all these arguments, but especially questioned the theory of ticks and natural cycles for it was not clear to the Lubicon why this phenomenon started only after the oil development, nor why this "natural cycle" was having little effect outside the developed areas (*Ibid.*:4). The Band's opponents insisted, however, that the idea of a distinctive Native way of life was "nebulous;" that "any aboriginal way of life has already been unalterably affected by the encroachment of modern life;" that "the clock cannot be turned back;" and that "it is impossible to do irreparable damage to something which doesn't exist (*Ibid.*:)." The judge agreed.

In explaining his decision, Judge Gregory Forsyth of the Alberta Court of Queen's Bench concluded that any damages possibly inflicted on the Lubicon Lake band could be compensated with money:

...to a significant but not complete extent, any damages sustained by the Applicants between the date of the application and the trial of the action were not irreparable but were calculable and could be satisfied by the payment of same by the Respondents. Further, the Respondents had the ability to pay such damages...on the basis of the material and evidence before me in this application, adduced by both sides, I am satisfied that damages would be an adequate remedy to the Applicants in the event they were ultimately successful in establishing any of their positions advanced. I have considered

very carefully the allegations of irreparable injury or damage not compensable by money and I am simply not satisfied that the Applicants have established in this application such irreparable injury.²⁸

The judge did not conclude that the band had not suffered irreparable damage, only that the band had not proven such an allegation. This was of little consolation to an already desperate people, especially when the judge appeared to be much more concerned with financial losses to the oil companies:

If I was required in this case to consider the factor of adequacy of damages to compensate the Respondents, then I am more than satisfied that the Respondents would suffer large and significant damages if injunctive relief in any of the forms sought by the Applicants were granted. Furthermore, the Respondents would suffer a loss of competitive positions in the industry vis à vis the position of other companies not parties to this action. That loss coupled with the admitted inability of the Applicants to give a meaningful undertaking to the Court as to damages either as individuals, or if authorized to bind the known class, as a class, on which point I have grave doubts, reinforces my decision that injunctive relief in this case is not appropriate.²⁹

Not only was the judge concerned with the “significant damages” that the developers would suffer if an injunction was granted, but he also made reference to the point that the band's obvious inability to pay damages if need be at a later date was taken into account. The implication of such a judgment might be that only those who can financially afford the consequences will be granted a court ruling in their favour. Either way, Judge Forsyth's decision gave a clear message which had a historical ring to it: the “nebulous” Native way of life must make way for “inevitable” development by powerful groups.

This court decision had a further twist. The same judge who conceded in the fall of 1983 that the Lubicon did not have a lot of financial security ruled on 6 January 1984 that the band was liable for all costs associated with that case. Judge Forsyth assured the Lubicon that they did not have to pay “forthwith,” but the defendants could apply for this payment later on. One Canadian newspaper concluded that the judge “who went all out to beat the band gets perfect 10,”³⁰ a feeling shared by the Lubicon's lawyer: “It's not over dramatic...to say this is the actual destruction of a people...We are presiding at a requiem, and I feel like our learned friends want to take the corpses out of the coffin and stab them again and put them back in the coffin.”³¹ The Lubicon have striven to convince the public, and Canadian

courts, that what the band has lost, and stands to lose if development continues at the rate and extent it has, is something intangible and yet more precious than any amount of money—their way of life:

Given the choice of returning to the way of life which they enjoyed before the onset of development activity, and which is truly in great jeopardy, or of all becoming oil millionaires living in condominiums in Hawaii, there's absolutely no question whatsoever in the minds of people who know the situation that Band members would immediately choose the return to the way of life they knew in the past ...

...the Lubicon Lake people have no experience with great sums of money and the alternative lifestyles which such money can buy. What they know of the outside world is more worrisome to them than appealing or attractive. Thus whatever [the judge] might think, the Lubicon Lake people have a great and a genuine and a really quite easily understood concern over the systematic and deliberate destruction of everything they have and know and are as a people. Realistically, the Lubicon Lake people don't have the choice of returning to the way of life they lived before the onset of development activity in their traditional area, and they know it, so they are literally stuck with having to try and figure out how to survive that development activity, how to protect as much as they can of their traditional way of life, and how to best make the clearly unavoidable transition from their familiar traditional economy to some kind of hopefully viable mixed economy (Lubicon Lake Band, 1985).

The Lubicon appealed the Forsyth decision, but, on 11 January 1985, the Alberta Court of Appeal ruled in favour of the oil companies.

Seismic activity and exploratory drilling is, in the nature of things, temporary. It is conceded that after it ends the wildlife will return in number. We simply do not know whether new fields have or will be found so we do not know if there will be a permanent development beyond the existing fields...In any event, the timespan here is sufficiently short that the plaintiffs could, if successful at trial, gain through damages sufficient moneys to restore the wilderness and compensate themselves for any interim losses... In any event, we agree with [Judge Forsyth] that, on the balance of convenience, the harm done to the respondents would far outweigh any harm done to the appellants during the interval before trial.³²

It is interesting to note that the Appeal judges also felt that the provincial government and oil companies stood to lose a lot more, or suffer a great

deal of inconvenience, if the Lubicon were granted an injunction to halt development pending their Aboriginal claims trial. What is most telling about the judgement, however, is the contention that “sufficient moneys” could “restore the wilderness.” The Lubicon appealed the injunction dismissal but the Supreme Court of Canada refused to hear their case. The Lubicon ran out of courts, and began to run out of money as well. The legally recognized band claims that there was a drastic cutback in its operating budget, a consequence the Lubicon believe was in retaliation to their public stance. For example, in 1981, the Band received \$104,174 in core and administrative funds. In 1982, they were initially given \$76,336, although much lobbying brought an increase to \$101,736. In 1983, they received \$51,460, though the government insisted “that there was ‘no relationship’ between (the) legal action and the budget cut-backs” (Lubicon Lake Indian Band Land Claim, 1987:24). Band records show that the annual income of the average Lubicon trapper dropped by two thirds, from approximately \$6,000 in 1982 to \$2,000 in 1984, while nearly one million dollars worth of oil was pumped *daily* in the Lubicon area. According to the Lubicon, there is no question of diminishing resources in their region since the arrival of oil developers; in 1979, Band members took 219 moose; in 1981, this number dropped to 110; in 1982, an even more dramatic drop to 37; and in 1983, only 19 were taken. Since then, the annual moose kill has counted in the 20s (Martin, 1984). The provincial government’s response to these figures was that the drop was a “countrywide phenomenon” largely due to the anti-fur movement.³³ Provincial Minister responsible for Native Affairs, Milt Pahl, refused to accept the band’s allegations that game had disappeared from their land ever since gas and oil exploration began in the area.³⁴ In addition, the Associate Minister of Public Lands and Wildlife, Don Sparrow, maintained that oil development could actually *help* wildlife because the clearing fires opened up the habitat for the moose, for example, and made hunting easier.³⁵ The problem, said some government officials, was that the Band had become too dependent on welfare payments, further proof that the Lubicon did not have a traditional way of life worth saving.³⁶ Ominayak’s response was that the province “just wants us to give up or go away” because “we don’t fit into any of the little boxes they set up” (Steed, 1984). One report described the onslaught on the community as “ethnocide;” more than genocide, the intrusion from outsiders was tearing “the very fabric of the meaning of life apart.”³⁷ An editorial in a major Canadian newspaper simply stated that “meaner treatment of helpless people could scarcely be imagined.”³⁸

Continued Conflict

Support for the Lubicon struggle spread to groups outside government agencies, including to the World Council of Churches. Following a visit to the Lubicon Lake area in 1983, the Council observed many abuses “which could have genocidal consequences.” Among the Council’s findings were instances of provincial officials “deliberately” allowing fires to burn unchecked, destroying thousands of acres of boreal forest in the band’s traditional hunting and trapping grounds; turning hunting and trapping trails into private roads for developers with many of the roads fortified with gates, guards, and “no trespassing” signs. Workers employed by the province and oil companies had been instructed to bulldoze traplines and to fire their rifles into the air in order to scare the game away, an activity pursued so enthusiastically that one participant described it as “almost like a competition.”³⁹ This disclosure was followed by the *Penner Report*, as the Standing Committee on Aboriginal Self-Government was known, which described the Lubicon situation as “one of the most distressing problems the Committee encountered” (Canada, 1983). In response to mounting public pressure, the Alberta government conducted an investigation of its own into the band’s allegations. For the most part, the Alberta Ombudsman found that “much of what my complainants regard as ‘evidence,’ I must discount as speculation,” although he concurred that it was vital to maintain “an important appearance of fairness” (Alberta, 1984:16; 21). The response from the federal government was no less enthusiastic.

When David Crombie became Minister of Indian Affairs and Northern Development in 1984, his first response to the Lubicon was to appoint a former judge to conduct a study; E. Davie Fulton arrived at the Lubicon site on 9 April 1985. The final *Fulton Report*, which was supportive of most of the Lubicon claims and aspirations, was submitted to Crombie in February, 1986. The updated report was never made public nor responded to by government officials.⁴⁰ Crombie, who the Lubicon believe was sympathetic to many of Fulton’s recommendations, was named Minister of Multiculturalism in April, 1986. The main stumbling block at this point was still the question of membership. The Lubicon had one figure, the federal government had its own, and Alberta recognized neither (Canada, 1986).

While the two levels of government disputed the membership criteria, and ignored the recommendations of the *Fulton Report*, the Lubicon attempted to deal with their situation on their own. They stopped some developers from entering their territory and even evicted others who “snuck in through the back door,” maintaining that “we’re acting under our own lawful authority, which is the only lawful authority in our area” (Booth, 1987).

Aware that they were physically incapable of patrolling their entire region, the Lubicon did not oppose most development projects, demanding only that the Band be consulted prior to commencement of operations. They were especially concerned with ensuring protection of particularly sensitive areas, including their nineteen different burial grounds and the proposed Reserve location. As far as the Lubicon are concerned, they own the land. They argue that because they never signed Treaty No. 8, their traditional landbase was never ceded to the federal government, and therefore could not have been transferred to Alberta. The proper cession will take place only when a Reserve is set up, an agreement that must be made between the Canadian government and the Lubicon.⁴¹

At the same time the Lubicon were involved in another publicity campaign to force the government to come to terms with the band's demands. Since April, 1986, the band had started a boycott of the 1988 Winter Olympic Games to be held in Calgary. From the band's point of view, one of the most ironic and even hypocritical aspects of the Winter Olympics was the proposed Native art display, entitled "Forget Not My Work," to be exhibited at the Glenbow Museum. The exhibition's corporate sponsor, Shell Canada, contributed \$1.1 million toward the exhibition, while it also operated a \$130 million tar sands plant in the Lubicon claimed traditional territory.⁴² "It's an astounding story of injustice and despair, of David against Goliath."⁴³ Several major museums officially refused to participate in the exhibition in a show of support for the Lubicon claim, withdrawing approximately 200 artifacts from the show,⁴⁴ while Joan Ryan, anthropologist and committee member of the exhibition board, resigned in protest against Glenbow Directors having put diplomatic pressure on foreign museums to participate.⁴⁵ The controversy led to a Museum Code of Ethics being passed on 4 November 1986 by the Museum General Assembly of Museums, in Buenos Aires, stipulating that "ethnic artifacts should not be used against the ethnic groups who produced them."⁴⁶ The name of the Glenbow exhibition also changed to "The Spirit Sings."

Following the completion of the 1988 Winter Olympics in Calgary, the federal government took the offensive by suing the Lubicon Lake Band, asking the court to impose an immediate settlement on the Band. In the fall of that year, the Band responded by withdrawing from all legal actions, declaring that Canadian courts had no jurisdiction on Lubicon territory. Lubicon Lake band land was not in Canada. The band boldly stated that it never considered decisions by Canadian courts to be binding on the Lubicon; the band retained the option of veto, much as nations do in international courts. In Lubicon land, only Lubicon laws applied.

On 15 October 1988, the Lubicon people intensified the patrol of their

borders. Blockades were set up and anyone wishing to enter Lubicon territory had to visit the check points and obey Lubicon laws. People came from across Canada to assist the Lubicon Lake people. At 6:30 a.m., 20 October, this short-lived independent nation was invaded. The Royal Canadian Mounted Police went in with sub-machine guns, sniper rifles and attack dogs, with helicopters flying overhead. Twenty-seven people were arrested but later released. On that same day, the Lubicon received some support from a most unlikely source. The Alberta Premier called Chief Ominayak to set up a meeting. Two days later, the province and the Lubicon reached an agreement.⁴⁷

Continued Inaction

Had the band only been obliged to deal with one level of government, they might have secured a home a long time ago. Traditionally, the provincial government was the most reluctant to acknowledge the band's claim because of pressures from oil developers. The federal government is constitutionally responsible for land claims but it could not proceed without a land transfer from the province. Now that the province settled with the Lubicon, Ottawa had only to act on the proposal. But the fall of 1988 was also the time of a federal election, and other, more pressing business called the attention of the government. When the Lubicon planned to stage demonstrations across the country at every point the electioneering Prime Minister stopped, officials from Ottawa agreed to proceed with negotiations. Soon after the election, on 24 January 1989, talks broke down with Ottawa, federal officials declaring that the Lubicon Alberta agreement was unacceptable, and that the band was "greedy not needy."⁴⁸ The Lubicon proceeded with their mandate and released the Treaty of North American Aboriginal Nations, a document modeled after other international treaties, such as NATO or NORAD. This mutual defense pact will ensure that if the Lubicon are ever invaded by outside forces, other groups who have signed the Treaty will come to their support.

Major newspapers across Canada assailed the government's inaction in redressing a case of historical injustice that drags on to the present. Some commentators suggested that the Lubicon dispute was typical of the ill treatment endured by most Native Canadians: "In a way, it is just a routine case of the looting and deceit inflicted on native people by Canadian governments for a century."⁴⁹ Others referred to the potential high cost for governments in settling with the Lubicon, but insisted that it was "the price of justice and, whatever it amounts to, it must and will be paid."⁵⁰ Still others pointed to the "state of legal limbo" in which the Lubicon were put, and

questioned whether it was “possible that more people are harmed by government's inability to make a decision than by their leaders' wrong moves.”⁵¹ Some bluntly proposed that “If a scrap of decency exists in Ottawa and Edmonton, the just settlement will be sought immediately.”⁵²

Government handling of the Lubicon's concerns has been consistent with Canadian reaction to and treatment of its Native population in general. There has been little effort to accommodate Aboriginal needs in the face of White goals. An analysis of the events surrounding the Lubicon struggle reveals a relentless trend that began with first contact in the Americas and persists to the present. Explorers in the 15th and 16th centuries had papal bulls and royal grants to support their territorial claims over those of the original inhabitants of the “New World.” Likewise, David Laird approached the Peace region in the late 19th century with a document that informed the local residents of their tenant status. Although he offered the Native people a treaty, he formally stated that “The Queen owns the country.” Like his predecessors, Laird did not request permission for White penetration of the area, but rather told the incredulous Natives “What is required of you.” One of the groups missed during that initial treaty “negotiation,” the Lubicon Lake Cree band, had the audacity to tell government officials what was required of them in order that Lubicon territory be used for non-Aboriginal development. Authorities could only react defensively for the Lubicon stand contradicted the very essence of the Canadian federation: European pre-eminence. When the government met the band on 24 January 1989 federal officials already had a prepared press statement before discussions began.⁵³

There is ample documentation showing mismanagement of Native affairs in Canadian history. From the first influx of settlers, expediency was evident in the handling of the Native population, but not all authorities were indifferent to the situation. Native pleas and protests were lost in the clamour of increased settlement and development which the incoming Europeans believed to be necessary and beneficial. In the face of opposing realities and values, the dominant society took precedence, and “authorities viewed the situation with mixed feelings and uncertain loyalties” (Brown and Maguire, 1979:11). On the one hand, there were the needs of the Aborigines; on the other hand there was the urgent call for “progress” by the White settlers. Submission to one group appeared to contravene the goals of the other, and this dilemma continues to plague the Canadian government today. It is fair to conclude that many politicians and well-intentioned officials have tried to resolve the Lubicon situation, but their vision was intrinsically different from that of the Lubicon. This might explain why, despite the numerous meetings between the parties, no agreement has been reached.

In the end, however, it is the Lubicon who are left agonizing over the prospect of their uncertain future.

Europeans had a tendency, from first contact onward, to try to mould Aboriginal people into something they considered comprehensible (Upton, 1979:17). The general approach was to help them by changing them, even to the extent of teaching “natives to be natives” (Brody, 1975:213). The Lubicon, however, did not fit into “the little boxes they set up.” Contemporary officials echoed views that were articulated throughout Canada’s history, for “In each colony...the ideal Indian was the invisible one” (Upton, 1979:136). Indeed, immigration calls for more settlers in the 19th century insisted that the Natives “were inoffensive and diminishing yearly...now we seldom see a Moose or an Indian” (*Ibid.*:137). Like the disappearing moose, the demise of the Native population was considered normal, a position that was “scientifically” supported by the doctrine of the survival of the fittest (Brody, 1981:58). The Native persistence with their own customs was adverse to White economic aims. A sneer at a cultural trait might be overlooked, but an obstacle to financial profits must be eradicated. Thus, the Potlatch was allowed to make a comeback, but the Native concept of land usage could never regain a foothold. The question of land was not negotiable. Natives were to come to their senses or die (Lester, 1988:3). When it came to the land, Europeans had only one thing to say to Aboriginal people: “They must yield or perish” (Brody, 1981:58).

To the irritated consternation of such claimants, some indigenous people refused to do either of the above. The Lubicon, for instance, were bypassed in 1899 but have fought ever since for a recognition which they insist is their due. Nor does their fight appear to be weakening. Like the perennial dandelion, it might be that every attempt to nip the Lubicon at the bud has led to a persistent rejuvenation of the band’s roots. Like all living things, however, Lubicon roots need some land in order to survive.

Conclusion

Treaty No. 8 will soon celebrate its centennial. One of the groups the Treaty Commissioners missed back in 1899, the Lubicon Lake Cree band, still do not have a Reserve. While they see their traditional land bulldozed for oil development, their community joins the welfare ranks, endures an outbreak of tuberculosis, and experiences the first ever case of suicide among their people (Goddard, 1988:44-45).

The Lubicon have not been without their supporters. Their claims were justified by the two first government agents who visited them in 1939; a judicial inquiry in 1944 favoured their position; a statement from Dr. Anwar

Barkat, Director of the Program to Combat Racism, Geneva, criticized the Canadian government's record on the Lubicon in 1983; the *Report of the Special Committee on Indian Self-Government* ("The Penner Report") agreed in 1983 that conditions facing the Lubicon were critical; church leaders in Canada, led by Archbishop Ted Scott, publicly denounced the treatment accorded to the Lubicon in 1984; the federal government's *Fulton Report* of 1985-86 supported the Lubicon position in all critical areas; a Buffy Sainte-Marie concert sold out in Calgary on 23 October 1987 in support of the Lubicon; after studying the Lubicon case for three years, the United Nations Human Rights Committee concluded in 1987 that the Lubicon Cree had been abused; the North American Indian Support Group took a stand in support of the Lubicon Band on 22 May 1988 (Goddard, 1988:3). Yet the Lubicon remain without a Reserve.

The Lubicon Cree have dealt with numerous officials from the federal government and their provincial counterparts, parliamentary committees, government commissions and studies, federal and provincial negotiators and advisers, various levels of courts, the United Nations, church groups, civil rights groups, museum curators, genealogists, anthropologists and historians, the media and the public at large. Still, the band has no Reserve. Admittedly, the Lubicon could have had a Reserve by now had they accepted the last offer from Ottawa. But the band insists on being compensated for what they consider to be irreparable damage to their way of life. As has been shown, governments, developers, and Canadian courts disagree with this assumption. In the face of such enormous obstacles and incredible odds, what makes the Lubicon hang in? Why have they become a role model for Native groups across Canada? On paper, the Lubicon have not achieved very much, at least not officially. The Lubicon have set a precedent because they have refused to give up. When all else failed, the Lubicon relied on their own sense of justice and fought on. Their response to Alberta's Land Tenure Program was exemplary of the feisty Lubicons. When the province sent property-tax notices to Little Buffalo and threatened those who had built corrals and fences with no provincial authority, the Lubicons trusted their own judgement and ignored Alberta's attempt at usurpation:

Almost everybody at the settlement...cancelled the two-acre deeds, returned tax notices, fought the school proposal, and left the corrals standing, and, when provincial officials arrived to announce the dismantling of four houses deliberately built outside hamlet boundaries, Lubicon hunters strolled into the meeting with loaded rifles, a gesture that so far has kept the province from calling in the bulldozers (Goddard, 1988:7).

The province could have easily countered the Lubicon with an armed force which the band would have had no chance to overcome. But the province retreated, perhaps knowing that an all-government attack would not be tolerated by Canadians, or maybe because some officials admitted to themselves that the Lubicon had a case. The Lubicon, for their part, could only gain confidence in their struggle with such a show of unified determination. Other groups of the First Nations heard of the incident, and nodded approvingly at the Lubicon display of strength. This same approach was used in October, 1988, when the Lubicon, frustrated by dealings with the provincial and federal government, set up blockades to stop oil trucks from entering their disputed territory. The government forcibly dismantled the blockade, but, for the first time, the provincial government agreed to the Lubicon's proposal for a Reserve. A year later, the federal government had still not come through for the Lubicon, so the band once again took the initiative. On 29 October 1989 the Lubicon gave Petro-Canada a 30-day notice for the crown corporation to obtain band permits and pay royalties for using the band's traditional lands, or else be evicted.⁵⁴ If a clash occurs between the Lubicon and federal forces with violent outbreaks, the Lubicon and all their supporters will likely lose. On the other hand, the Lubicon feel that they have already lost a great deal, besides the land disruption around them. Chief Ominayak wonders how long his people will withstand the pressures from without, and hopes that the community will stay intact, otherwise no one will make it. "That is one of the biggest fears I have, all the time—that even if we win, we've lost" (Sniatyniski, 1987). Chief Bernard Ominayak feels that the Lubicon already show serious wounds: "People subjected to welfare for eight years, it takes a lot out of people and that can't be resolved overnight...Our people survived off our lands for years. To see the destruction right before your eyes hurts in many ways" (Interview with author, 28 June 1989).

Notes

1. The term band refers to the Lubicon Lake Cree people; the term Band refers to a structure created under and recognized by the *Indian Act* of Canada.
2. As cited in Lubicon Lake Band, "Presentation to the Standing Committee," The report erroneously indicated that Lt. Gov. Morris was present at the Treaty No. 8 negotiations in 1899. Morris died in 1889. Material in parentheses was on the copies provided by the Lubicon.

3. Report by Mr. Justice W.A. Macdonald, of the Supreme Court of Alberta, The Court House, Calgary, Alberta, 7 August 1944. As recorded in Special Joint Committee of the Senate and the House of Commons appointed to continue and complete the Examination and Consideration of the *Indian Act*, Minutes of Proceedings and Evidence, No. 12, Monday, 21 April 1947, (Ottawa: King's Printer, 1947), 557-559. In reaching his decision, Judge Macdonald took into account the report of Commissioner J.A.J. McKenna, dated 31 May 1901, and approved by Order P.C. 1182, in which McKenna states that "I have taken it that everyone, irrespective of the portion of Indian blood which he may have, who enters into treaty, becomes an Indian in the eye of the law and should, therefore, be treated as an Indian both by the Department of the Interior and the Department of Indian Affairs."
4. As cited in Lubicon Lake Band, "Presentation to the Standing Committee", 5-6. Material in parenthesis was on the copies provided by the Lubicon.
5. *Ibid.*, 6. Material in parenthesis, and emphasis, was on the copies provided by the Lubicon.
6. *Ibid.*, 7. Material in parenthesis was on the copies provided by the Lubicon.
7. *Ibid.*, 7-8. Material in parenthesis was on the copies provided by the Lubicon.
8. *Ibid.* Material in parenthesis was on the copies provided by the Lubicon.
9. *Ibid.*, 12. Material in parenthesis, and emphasis, was on the copies provided by the Lubicon.
10. Information provided to author by band adviser, Fred Lennarson, during telephone interview, 1 November 1989.
11. *Alberta Hansard*, 25 March 1977, 483.
12. *Alberta Hansard*, 4 April 1977, 623.
13. *Ibid.*
14. *Alberta Hansard*, 6 May 1977, 1206.
15. *Ibid.*
16. *Alberta Hansard*, 6 May 1977, 1208-1209.
17. *Alberta Hansard*, 6 May 1977, 1210.
18. *Ibid.*
19. *Alberta Hansard*, 6 May 1977, 1211-1212. The Alberta government could not come to terms with the amount of land the Native people were claiming in the province. In 1985, the Minister of Native Affairs,

Milt Pahl, made the remark that: "It's like somebody comes along and says: I'm a direct descendant of Christopher Columbus, and I claim all of North America; therefore I want an injunction so that nobody will turn another scoop of dirt until my claim is satisfied." *Alberta Hansard*, 18 April, 1985, 460. Pahl would probably have been more astonished to hear that Aboriginal people in the Americas never believed that Columbus had a just claim to their territory.

20. *Alberta Hansard*, 6 May 1977, 1215.
21. *Alberta Hansard*, 6 May 1977, 1216.
22. *Alberta Hansard*, 6 May 1977, 1215.
23. *Alberta Hansard*, 6 May 1977, 1214.
24. *Alberta Hansard*, 6 May 1977, 1218-1219.
25. For example, following the break-up of talks in January, 1989, the federal government announced that some band members were willing to deal with the government on their own. This apparent split within the band and threat to the leadership was seemingly resolved on 31 May 1989 when Chief Ominayak was unanimously reelected. Two months later, however, the federal government agreed to recognize a new band in the region. See *The Edmonton Journal*, 27 July 1989.
26. *Alberta Hansard*, 13 April 1981, 162.
27. *Alberta Hansard*, 29 April 1981, 406.
28. "Reasons for Judgement of the Honourable Mr. Justice Forsyth," copy of the judgement, No. 8201-03713, Lubicon Lake Band records, 9-10.
29. *Ibid.*, 12-13.
30. *The Toronto Star*, 30 January 1984.
31. Statements made by James O'Reilley, legal counsel for the Lubicon Lake Band, as cited in *The Toronto Star*, 30 January 1984. See also, O'Reilley's presentation during Judge Forsyth's hearing on the matter of costs. *Proceedings*, Court of Queen's Bench of Alberta, Judicial District of Calgary, No. 8201-03713, 18-19.
32. *Proceedings*, Court of Appeal of Alberta, Calgary Civil Sittings, Special hearings for 7-10 January, 1985, 16057, 15-16.
33. *Alberta Hansard*, 15 April 1985, 365.
34. *Alberta Hansard*, 15 April 1985, 364-365.
35. *Alberta Hansard*, 15 April 1985, 459.
36. Lubicon Lake Band, "Statement," 10 December 1984, 4. Band records show that while only the Lubicon old and infirm received welfare assistance in the early 1980s, approximately 95 percent of the band is now on welfare.

37. *The New York Times*, 5 June 1984.
38. Editorial, "The helpless abused," *The Globe and Mail*, 7 April 1984.
39. Dr. Anwar M. Barkat, Letter from the Director of the Programme to Combat Racism, World Council of Churches, to the Rt. Honourable Pierre Trudeau, October 1983, 3-6. A copy of this letter is found in the Boreal Institute Collection (Lubicon Lake Indian Band Land Claim).
40. Reporters were able to disclose its contents only after having obtained copies through the *Freedom of Information Act*. See Sniatynski, 1987.
41. Lubicon Lake Band, "Press Statement by Bernard Ominayak, Chief, Lubicon Lake Band," 12 January 1987.
42. *Windspeaker*, 2 May 1986.
43. *Calgary Herald*, 24 May 1986.
44. *Edmonton Journal*, 3 October 1986 and 13 December 1986; Lubicon Lake Band, "Statement." 9 December 1986, 22 January 1987, 26 January 1987.
45. *Edmonton Journal*, 16 November 1986.
46. Lubicon Lake Band, "Statement," 26 January 1987.
47. The province agreed to transfer 76 square miles to the Lubicon, with full surface and subsurface rights, plus 19 square miles with only surface rights, but the province would not develop this area without Band consent. This information was provided to the author by Fred Lennarson, adviser for the Lubicon, during an interview on 21 June 1989.
48. This was the opinion expressed by government public relations person, Ken Colby, to the news media.
49. Editorial, *Ottawa Citizen*, 2 April 1986.
50. Editorial, *Calgary Herald*, 5 April 1986.
51. Vicki Barnett, "Injustice to Lubicon Indians is national disgrace," *Calgary Herald*, 8 April 1986.
52. Editorial, *Globe and Mail*, 7 April 1984.
53. Lubicon Lake Band, "Statement," 8 March 1989, 1.
54. Don Thomas, "Lubicons threaten to evict Petro-Can," *The Edmonton Journal*, 2 November 1989.

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