

U N I T E D N A T I O N S

Commission on Human Rights
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Working Group on Indigenous Peoples
Twelfth Session
Agenda item 5

ORAL INTERVENTION BY SHARON VENNE ON BEHALF
OF THE LUBICON CREE

Since the last Working Group, there has been a change in government within the state of Canada. With the change, the Lubicon people looked forward to working with the new Liberal Government under the Prime Ministership of Jean Chretien. Prior to becoming the Prime Minister, Chretien had made some very positive statements concerning the Lubicon case. But, alas, initial positive feelings are giving way to the reality of the situation. On the 11th of July, 1994, Indian Affairs Minister Ron Irwin responded to a letter sent by Chief Bernard Ominayak. The letter came four months after a meeting in the course of which the Minister requested that the Lubicon people outline their position for restarting negotiations. The speedy response gives a whole new meaning to Chretien's motto "support a swift resolution". Irwin's response to the Chiefs letter added a whole new dimension to the term: negotiation. (For the record, we are attaching Jean Chretien's, Irwin's and Chief Ominayak's letters to this submission.)

The Chiefs letter was completely and deceitfully misrepresented. The Lubicon have never been prepared to discuss with the Government a settlement of the Lubicon case based upon the notion that the Lubicon would extinguish their land rights. The Government of Canada may have been able to get other Indigenous Peoples to agree to the Canadian government's extinguishment policy. This has never been the case with the Lubicon. As Chief Bernard Ominayak stated in his letter dated 15 July, 1994:

<<First and foremost we have never been prepared to cede our unextinguished aboriginal land rights over our traditional Lubicon territory as a pre-condition of settlement talks. Nor will we ever be prepared to cede our unextinguished aboriginal rights as a precondition of settlement talks. All previous talks have been explicitly and by prior agreement without prejudice to our unceded aboriginal land rights -- although it is true that the representatives of the Federal Government have often deceitfully claimed otherwise. While we may

have little control over the lies which representatives of both levels of the Canadian Government frequently tell about the nature of any agreements we make with them we have absolutely no intention of allowing these lies to define our position or to go unchallenged.>>

The Lubicon Cree have been waiting for over fifty years for the Government of Canada to come to the table in open, fair and honest negotiations. Over time, the Lubicon discovered that the Canadian Government is not interested in open, fair and honest negotiations. Instead, the Government is trying to browbeat and intimidate the Lubicon into accepting a settlement on the basis of conditions which are unacceptable. To accept the government's policy of extinguishment of Aboriginal land rights as a pre-condition for settlement would mean denying the heritage of the children and grandchildren.

The fact that certain governments are attempting to intimidate indigenous delegates confirms the legitimacy of the claims voiced by these same delegates.

ATTACHMENTS

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Leader of the Opposition
Chef de l'Opposition

Ottawa, Ontario
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Dear Father Johnson:

Thank you for your letter and the copy of the report of the Lubicon Settlement Commission of Review.

The Liberal Party understands your concern. We fully recognize that the Lubicon have struggled for over fifty years to secure a permanent land base and the means to preserve their way of life. And we believe - with negotiations suspended since 1989 - that the government has reneged on its fiduciary responsibility to the Lubicon People.

Time is wasting. As a start, we believe the government should proceed with recommendation number five of the Settlement Commission report to hold all royalties in trust and withhold leases and permits on traditional Lubicon lands - unless approved by the Lubicon. Moreover, future negotiations should reflect the intent of recommendation number eight, asserting that the extinguishment of

Aboriginal rights must not be a condition for a settlement - a position consistent with Liberal policy.

Ethel Blondin-Andrew, Liberal Critic for Aboriginal Affairs, has urged the government to renew negotiations with the Lubicon and resolve this issue, once and for all. While it is doubtful whether the current government possesses the will to do so, you can be assured that Liberals will continue to press the Conservatives to respond to the recommendations of the Settlement Commission and resume negotiations.

We support the swift resolution of all claims, and consider the Lubicon claim to be a priority. As Leader of the Opposition, I appreciate the time you have taken to write.

Sincerely,

Jean Chretien

Father Jacques Johnson
Co-Chair

Lubicon Settlement Commission of Review
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Ministre des Affaires
indiennes et du Nord canadien

Minister of Indian Affairs
and Northern Development

JUL 11 1994

Chief Bernard Ominayak
Lubicon Lake Indian Nation
3536 - 106 Street
EDMONTON AB T6J 1A4

Dear Chief Ominayak:

Further to your letter of May 21, 1994 and my letter to you of May 16, 1994 I am now in a position to respond to your proposal on how to return to negotiations on your First Nation's claim.

In your letter of February 28, 1994 you had proposed that Canada appoint a negotiator who will report directly to me, and who will have the authority and competence to effectively handle a number of procedural and substantive matters. You then listed the issues which would need to be addressed, such as membership, reserve lands, community

facilities, commercial development, and others. While your objective would be to negotiate a complete settlement package before signing any agreement, you suggested in your letter that agreements-in-principle (AIPs) may be possible in some of those areas while work continues in others.

I am pleased to advise you that the federal government is prepared to proceed largely on the basis you have proposed. Rather than continue on the basis of previous offers, we agree that a fresh start is needed.

I and the Minister of Justice, the Honourable Allan Rock, have therefore been authorized to jointly appoint a federal negotiator who will have responsibility for achieving AIPs on as many as possible of the issues which arise in the claim of your First Nation under Treaty No. 8 or for program benefits. Both Mr. Rock and I have decided that the federal negotiator should be a person from outside the Government of Canada.

Where AIPs cannot be achieved, the federal negotiator will attempt to scope out options for subsequent consideration by the government. Where difficulties arise, the negotiator will have the authority, subject to the agreement of your First Nation and (where involved) the Province of Alberta, and with the agreement of Mr. Rock and myself, to appoint a mediator to assist the settlement process.

To the extent possible, each of the issues which arise in negotiations will be directed to the appropriate processes and officials within the federal government, but under the overall supervision of the federal negotiator, for consideration within existing authorities and associated funding. For example, the determination of land quantum and economic benefits owing under Treaty No. 8 can be addressed in light of the Specific Claims Policy authority of the government. Settlement of those two issues would, of course, involve the province in the usual way.

The federal negotiator will oversee the negotiation process with regard to federal participation in all aspects of the claim. The federal negotiator would also have full authority to work with the province on all issues which involve the provincial governments and to represent Canada on the claim with any other party.

While the negotiator will be authorized to have issues go to mediation, Canada is not prepared at this time to make a decision on the use of binding arbitration before we have even begun negotiations, let alone attempt mediation if necessary. The federal government will want to receive the negotiator's recommendations on any outstanding issues before considering whether it is appropriate to use special dispute resolution measures of a binding nature.

From my review of the history of this claim, I have serious concerns about the prospect of resolving questions about

continuing Aboriginal rights or any compensation based upon that matter through negotiations. These are fundamental legal issues that remain in dispute which in our view are likely only to be resolved in the courts.

I would ask for your response to this letter at your earliest convenience. Like you, I am very anxious to have negotiations on this claim commence as soon as possible. My colleagues in Cabinet and caucus share my strong desire to establish a new and positive relationship with your First Nation and to embark upon negotiations with a completely fresh start in an environment conducive to a mutually successful outcome. As a first step I would ask that you contact Mr. Brad Morse, of my office, to discuss the kind of person whom you feel could be an effective representative of the Government of Canada in these negotiations.

Yours truly,

Ronald A. Irwin, P.C., M.P.

c.c. Honourable Allan Rock

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July 15, 1994

The Hon. Ron Irwin
Minister, Indian and Northern Affairs
Government of Canada
Ottawa, ONT K1A 0A6
Fax 613-953-4941

Dear Sir:

The Lubicon people would be pleased to discuss appointment of a federal negotiator or anything else with you but not on the terms proposed in your 7-11 letter. To proceed on the basis of the terms proposed in your 7-11 letter would be to deny the heritage of our children and grandchildren.

You indicate in your 7-11 letter that "the federal government is prepared to proceed largely on the basis (proposed by the Lubicons)". However you have in fact flatly

rejected all Lubicon proposals for re-starting talks -- including both those things which we discussed during our 2-18 meeting in Little Buffalo and those things which we outlined to you in our letter of 2-28.

First and foremost we have never been prepared to cede our unextinguished aboriginal land rights over our traditional Lubicon territory as a pre-condition of settlement talks. Nor will we ever be prepared to cede our unextinguished aboriginal land rights as a pre-condition of settlement talks. All previous talks have been explicitly and by prior agreement without prejudice to our unceded aboriginal land rights -- although it is true that representatives of the Federal Government have often later deceitfully claimed otherwise. (While we may have little control over the lies which representatives of both levels of Canadian Government frequently tell about the nature of any agreements we make with them we have absolutely no intention of allowing these lies to define our position or to go unchallenged.)

You quote our 2-28 letter as listing "the issues which would need to be addressed such as membership, reserve lands, community facilities, commercial development and others" -- all matters pertaining directly to reserve construction. You note rightly that our "objective would be to negotiate a complete settlement package before signing any agreement" but then begin to cant our position by saying that we "suggested....that agreements-in-principle (AIPs) may be possible in some of those areas while work continues in others". By the end of your letter you have distorted beyond recognition our clear and explicit position on these and other matters.

You advise that you and Mr. Rock have "been authorized to jointly appoint a federal negotiator WHO WILL HAVE RESPONSIBILITY FOR ACHIEVING AIPs ON AS MANS AS POSSIBLE OF THE ISSUES WHICH ARISE IN THE CLAIM OF YOUR FIRST NATION UNDER TREATY NO. 8 OR FOR PROGRAM BENEFITS". You say "To the extent possible, each of the issues which arise in negotiations WILL BE DIRECTED TO THE APPROPRIATE PROCESSES AND OFFICIALS WITHIN THE FEDERAL GOVERNMENT, but under the overall supervision of the federal negotiator, FOR CONSIDERATION WITHIN EXISTING AUTHORITIES AND ASSOCIATED FUNDING". As an example of "existing authorities and associated funding" you say "DETERMINATION OF LAND QUANTUM AND ECONOMIC BENEFITS OWING UNDER TREATY NO. 8 CAN BE ADDRESSED IN LIGHT OF THE SPECIFIC CLAIMS POLICY AUTHORITY OF THE GOVERNMENT...(INVOLVING)...THE PROVINCE IN THE USUAL WAY" (underlining added.) [CAPS]

That may be your counter-proposal to us as how to proceed with negotiations but it sure as hell has nothing to do with the proposals we made to you. We have never been prepared to negotiate a settlement of our unextinguished aboriginal land rights under the terms of a Treaty negotiated by others nearly 100 years ago to which we were not a party and which is known not to even accurately reflect what was agreed by

the Aboriginal Nations who did sign it. We have never agreed to negotiate a settlement of our unextinguished aboriginal land rights under the long since discredited "Specific Claims Policy authority of the government" which even the Chretien Government has publicly criticized as "unworkable", "out of step with the legal and political evolution of Aboriginal and treaty rights", offensive to Aboriginal people and in need of a "major overhaul". And we certainly did not propose to negotiate AIPs with "appropriate (program) officials... for consideration within existing authorities and associated funding (which we in fact did AS A PRE-AGREED FIRST STEP with representatives of the Mulroney Government nearly six years ago and see no good reason to repeat since everybody involved knows very well the details and cost of Lubicon settlement requirements and what can be covered out of existing government programs and services).

Specifically what we proposed in our 2-28 letter is as follows:

"It is our intention to negotiate a complete package before signing any agreement. If some items (such as financial compensation) take longer to finalize it is our intention to achieve written agreement-in-principle with related work-program and time-table prior to signing any interim agreement (such as agreement on an independent, binding three person tribunal). IN ANY EVENT IT IS OUR INTENTION TO ACHIEVE AGREEMENT ON RESERVE CONSTRUCTION COMPLETE INCLUDING COMMERCIAL AND AGRICULTURAL DEVELOPMENT PRIOR TO SIGNING ANY INTERIM AGREEMENT" (underlining added). [CAPS]

"On timing we believe that it's possible, desirable and in fact essential to achieve agreement-in-principle (with regard to an over-all master agreement) in a matter of days and agreement-in-fact in a matter of weeks. THE NECESSARY TECHNICAL WORK HAS LONG SINCE BEEN COMPLETED AND REPEATEDLY REVIEWED IN DETAIL BY ALL OF THE INVOLVED PARTIES. ALL THAT REMAINS IS UP-DATING THE INVOLVED NUMBERS, RE-DRAWING THE BOUNDARIES FOR THE WILDLIFE MANAGEMENT AND ENVIRONMENTAL PROTECTION AGREEMENT WITH THE PROVINCE, PREPARING THE TIMETABLE AND WORK-PROGRAM FOR ANY ITEMS WHICH MIGHT REQUIRE EXTENDED DISCUSSION OF IMPLEMENTATION (SUCH AS PERHAPS RELATED ENABLING LEGISLATION) AND ESTABLISHMENT OF AN INDEPENDENT TRIBUNAL IN THE EVENT THAT THERE ARE ITEMS WHICH CANNOT BE RESOLVED THROUGH NEGOTIATIONS" (underlining added). [CAPS]

On how to deal with issues which cannot be satisfactorily resolved through negotiation -- presumably again in context the related questions of continuing aboriginal land rights and compensation -- we proposed the independent, binding three person tribunal originally suggested by then Conservative Alberta Premier Don Getty and supported as a fair and equitable way to deal with such things by ex-Federal Justice Minister and B.C. Supreme Court Judge E.

Davie Fulton, the broad-based Lubicon Settlement Commission, organized Labour in Canada, the Churches in Canada and people across the country and around the world. (In this regard it is well notable that Premier Getty originally proposed this independent three person tribunal in order to try and bridge an earlier impasse created precisely because Canadian Government had proven unwilling and the Canadian Courts had proven incapable of effectively redressing the question of continuing Lubicon aboriginal land rights -- a conclusion shared among others by the UN Human Rights Committee after a three year inquiry into this very problem.)

Instead of an independent, binding three person tribunal to fairly and equitably resolve matters which cannot be resolved through negotiations you propose to have the federal negotiator "appoint a mediator to assist in the settlement process" -- which is exactly the same proposal made by ex-Mulroney Indian Affairs Minister Bill McKnight and Mulroney-appointed federal negotiator Brian Malone in the fall of 1987 when Mr. McKnight was also under considerable political pressure to agree to some form of independent dispute resolution after the all-party Parliamentary Standing Committee on Aboriginal Affairs unanimously supported a Lubicon proposal to reinvolve E. Davie Fulton as an independent mediator responsible to the Standing Committee instead of to the Government per se. You indicate that "Canada is not prepared at this time to make a decision on the use of binding arbitration before we have even begun negotiations" -- which is the same kind of catch 22 proposition which we've been hearing for years from people like Messrs. McKnight and Federal Justice Department lawyer Ivan Whitehall in response to calls for some kind of independent dispute resolution mechanism necessitated by near across-the-boards failure to satisfactorily resolve questions pertaining to Aboriginal rights through simple negotiations between Aboriginal people and an institutionally all-powerful Federal Government. You indicate that "the federal government will want to receive the negotiator's recommendations on any outstanding issues before considering whether it is appropriate to use special dispute resolution measures of a binding nature" -- which is tantamount to one side in a two party dispute unilaterally deciding whether and how to handle matters in dispute. And you make clear your "serious concerns about the prospect of resolving questions about continuing Aboriginal rights or any compensation based upon that matter through negotiations" indicating that "these are fundamental legal issues that remain in dispute which are...likely only to be resolved in the (Canadian) courts" -- which is of course only yet another rendition of the familiar Mulroney Government refrain "go to (the Canadian Courts where legal gangsters like Whitehall will predictably employ procedural means to ensure that you will never be able to achieve a fair hearing) if you think you have any compensation coming" for the systematic destruction of your traditional society and the outright theft of your traditional lands and

resources. (The shameful history of official Canadian Government abuse of the lawful rights of Aboriginal people is in fact the reason for the UN Human Rights Committee decision that the Lubicon people cannot achieve effective legal or political redress within Canada -- and it is also the reason why the independent, binding three person tribunal is needed, proposed and so widely supported.)

Lastly you should know that the Grimshaw (reserve land) Accord was not tied to membership numbers as is now being deceitfully claimed in various forums by representatives of the Alberta Provincial Government and echoed abroad by representatives of the Chretien Federal Government -- something which we will shortly be addressing in other forums ourselves. The Grimshaw (reserve land) Accord was proposed by then Alberta Premier Don Getty specifically to get around the long-standing disagreement between the Lubicons and the Alberta Government over membership numbers -- or at least over the number of Lubicons with continuing aboriginal land rights.

Premier Getty proposed that he and I instead agree on an amount of reserve land which as honourable men we could both agree was "fair" -- this was in fact the basis of the Grimshaw (reserve land) Accord. Contrary to the deliberately deceitful claims now being made by current Alberta Government representatives who clearly don't share Premier Getty's commitment to personal honour our agreement with Premier Getty about releases pertained only to fully absolving the Provincial Government of its constitutional responsibility for transferring land back to Federal jurisdiction for purposes of establishing a Lubicon reserve -- not to determining the size of that reserve.

Subsequent to the Grimshaw Accord of course both levels of Canadian Government participated in a coordinated and well documented effort to dismantle the Lubicon society by creating two new Bands -- one on either side of the traditional Lubicon community of Little Buffalo Lake -- and then seeking to bribe and/or variously entice members of the Lubicon society to join one or other of these two new Bands. While this despicable, racist and overtly colonialistic effort on the part of both levels of Canadian Government to dismantle the Lubicon society in order to deny us our lawful rights was ultimately unsuccessful it did again further complicate the already complicated Lubicon membership situation.

Given this history, the need to fix membership numbers for the purpose of making certain settlement calculations in areas like housing, the fact that settlement itself will clearly still further impact those membership numbers and the well established legal principle that such disreputable activity as creation of the Woodland Cree Band to try and deny the Lubicon people our lawful rights should not be rewarded, we propose to fix membership for the purpose of settlement negotiations at the last time that there was

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