

Lubicon Lake Indian Nation

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November 24, 2004

The Hon. Andy Scott
Minister of Indian and Northern Affairs
Government of Canada
Ottawa, ON K1A 0H4

Via Fax: 1-613-953-4941

Dear Mr. Scott;

Thank you for your letter of October 15th, 2004. I did not receive it directly but upon learning of its existence several weeks later I obtained a copy from someone in your office.

I am pleased to hear that you are reviewing the mandate of federal negotiators and that the Martin government "will continue to negotiate" a settlement of Lubicon land rights.

However I am concerned that in the course of reviewing the mandate of federal negotiators you have access to reliable information about our concerns, the problems negotiators face at the table and what possible solutions have been proposed.

I say this because we have earlier encountered problems when Departmental officials or others concerned with this file have, for whatever reasons, sought to convince some of your predecessors and some of your predecessors' senior staff that no settlement of Lubicon land rights is possible or that, with regard to particular issues, no alternatives exist to the positions these same officials have taken.

This has already led to unnecessary disputes and unacceptable delays in negotiating a final settlement of Lubicon land rights.

Four years ago Alberta Regional officials proposed to unilaterally break an earlier Ministerial agreement under which INAC reimbursed the Lubicon Lake Indian Nation for social assistance payments made to Lubicon Nation members residing outside of Little Buffalo, because they arbitrarily deemed Lubicon members living in Little Buffalo as living "on-reserve" and other Lubicon members living in surrounding areas to be living "off-reserve". The Lubicon Nation was not prepared to quietly acquiesce to this discriminatory, arbitrary and phony distinction between Lubicon Nation members living in the non-reserve community of Little Buffalo and other non-reserve places. Nor were

we prepared to have Alberta Regional officials break agreements made between the Minister of Indian Affairs and the Lubicon Nation.

At the time, then-Chief Federal Negotiator Brad Morse assured then-Minister of Indian Affairs Robert Nault that this was an unrelated Regional Office matter that shouldn't affect Lubicon land rights negotiations. Alberta Regional officials argued that this was an administrative matter, that it stemmed from an agreement with the province that could not be changed, that this was Departmental policy, and that for all of these reasons there was no alternative to the position they were taking.

I spoke with then-Chief Federal Negotiator Brad Morse on the phone shortly after receiving word of this move by the Regional Office. Then-Chief Federal Negotiator Brad Morse took the position that this move was unrelated to Lubicon land rights negotiations. I told then-Chief Federal Negotiator Brad Morse that this move to undermine our ability to provide for the needs of our members was absolutely related to our efforts at the table to provide for the needs and rights of our members. I told then-Chief Federal Negotiator Morse that everything was on hold until the matter of social assistance to Lubicon members in the surrounding areas was sorted out and Canada honours the agreements it makes.

Rather than proceeding towards a settlement at the negotiating table, we spent most of the summer of 2000 debating these issues publicly, with media reports multiplying and letters and resolutions from across Canada and around the world coming in to the Minister's office daily. To his credit, then-Minister Robert Nault refused to accept his officials' insistence that this was Departmental policy and that therefore there was no alternative and personally stepped in to correct the problem.

In September of 2000, then-Minister Nault wrote to me committing to honour and respect the previous agreement regarding social assistance. He also initiated a back channel of communication between us, through his Special Assistant for Alberta, in order to ensure that he had more than one source for information about Lubicon negotiations and that the information he received was as reliable and accurate as possible.

In the spring of 2001, while negotiating the terms of capital construction to be done in the context of a Final Settlement Agreement, we encountered the question of what would happen if there were changes to federal or provincial building codes and standards which had the effect of significantly increasing construction costs. We were concerned that during the lengthy community construction period some changes could be made to building codes and standards for health and safety reasons which the Lubicons would have to implement when building community facilities. Since the federal exposure on capital construction costs is capped at a set amount, any new health and safety standards that have a significant cost impact could make completion of the Lubicon community impossible unless there is some provision to deal with associated costs.

Then-Chief Federal Negotiator Morse took the position that it was unlikely that there would be any changes to the building codes and that the Government of Canada was unwilling to make any provision to deal with any potentially significant cost implications for construction of a number of essential community facilities caused by revisions to

health and safety codes and standards post-settlement. He told the Minister that it was very unlikely that there would be any changes to the building codes and that the Lubicons were effectively asking for a “blank cheque”, which was clearly not the case (we were looking for a method of addressing costs only if and when changes are made to health and safety requirements that impose a significant and quantifiable cost on a known list of Lubicon community buildings).

From January to September 2002 negotiations on the Final Settlement Agreement were effectively stalled by then-Chief Federal Negotiator Morse’s refusal to address the issue of increased construction costs due to changed codes and standards. During this eight-month gap then-Chief Federal Negotiator Morse seemed more concerned with eliciting a Lubicon concession on this issue than with finding a mutually satisfactory solution to what was, in our opinion, a mutual problem with the capital construction portion of our agreement. Federal negotiators made this even clearer by pleading with us to “throw Brad a bone” by conceding on this issue regardless of the potential impact it might have on our ability to complete construction of essential community facilities like our old peoples’ home and a recreation centre for our young people.

Negotiations only resumed after I met with then-Minister Robert Nault in Calgary in July of 2002. At that meeting we discovered that then-Minister Nault had been given a distorted picture of the issues which served the political and professional needs of his officials better than it did the Minister. Direct discussions between he and I allowed us to clarify the real problems we faced and precipitated further negotiations shortly thereafter.

Those discussions resulted in an agreement on the community construction element of the Final Settlement Agreement in September of 2002 – despite earlier suggestions by federal negotiators that a resolution of the issue of codes and standards that would satisfy both parties was not possible.

In both of the instances I have described above, the reliability of the information the Minister received from people on his side of the table became an issue for both sides. Having been unable to reach agreements on key issues and unwilling to accept responsibility for the positions they were taking, federal officials simultaneously told us that Departmental policy made resolution impossible while telling the Minister that the Lubicons were to blame for lack of progress and so began creating a self-fulfilling prophecy that it was impossible to move forward on a Lubicon settlement. In reality, as then-Minister Nault found out, progress was always possible provided that the Lubicon people are not asked to jeopardize their future for the sake of present expediency.

We are at that point again. I am concerned that federal officials are once again telling you that progress is not possible, that Departmental policy rules out any solutions to the problems before us and that the only alternative is to forego settlement of Lubicon land rights and return to the open disputes of the past.

I do not believe that. I believe that settlement is possible if all parties come to the table looking for a settlement.

With that in mind I asked Kevin Thomas to meet last week with your Special Assistant on Alberta, Barry Christoff, to carry the message that a final settlement is within our grasp providing that federal negotiators return to the table with a mandate to negotiate such a settlement.

When Mr. Christoff and Mr. Thomas met, Mr. Christoff proposed appointing a new Chief Federal Negotiator as a way of moving things forward.

On instructions, Mr. Thomas replied that who Canada sends to the negotiating table is up to the Minister not the Lubicon Nation and that our concern is only that your Chief Federal Negotiator comes to the table with the mandate and a commitment to negotiate a final settlement in good faith. He told Mr. Christoff that the present in-house federal negotiator, Sharman Glynn, is refusing to even meet with the Lubicons unless the Lubicon people formally, in writing, express “confidence” in her as Chief Federal Negotiator.

Mr. Christoff said that as a first step he would speak to the present Chief Federal Negotiator and ask her to arrange a meeting with Lubicon negotiators in Little Buffalo.

I also asked Mr. Thomas to set up ongoing communication with your Special Assistant in order to improve dialogue between us and forestall any further delays that stem from a misunderstanding of the intentions of either party. Hopefully with more direct communication we will be able to explore together what can be done to achieve a settlement rather than accept the cynical assessments of those who argue for whatever reasons that a settlement is not possible.

Lastly on that note I would like to invite you to personally visit the Lubicon community of Little Buffalo so that you can meet our elders and so that they can meet you. We would welcome an opportunity to meet the next time you are in Alberta. Perhaps Mr. Christoff can discuss your availability with Mr. Thomas.

Sincerely,

ORIGINAL SIGNED BY

Bernard Ominayak
Chief, Lubicon Lake Indian Nation