



Government of Canada  
Permanent Mission of Canada  
to the United Nations and the  
Conference on Disarmament

Gouvernement du Canada  
Mission permanente du Canada  
auprès des Nations Unies et de  
la Conférence du désarmement

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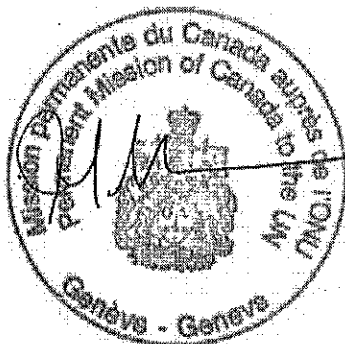
**Reference:** Letter of Allegation AL CAN 3/2016 – Canada's submission

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the Independent Expert on the promotion of a democratic and equitable order's letter dated 1 December 2016 (AL CAN 3/2016).

The Permanent Mission of Canada has the honour to submit its response. The submission consists of one pdf document.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 29 March 2017.



**Canada's responses to Questions from the Independent Expert on the promotion of a democratic and equitable international order sent by letter from the Office of the High Commissioner for Human Rights, United Nations, dated December 1, 2016**

By a letter dated 1 December, 2016, the Independent Expert on the promotion of a democratic and equitable international order asked Canada for information regarding information he apparently received concerning allegations of continued interference with the enjoyment of human rights by an entity referred to as the Lubicon Lake Nation. The Independent Expert also sought information regarding the free, prior and informed consent of Indigenous peoples. The request for information raises matters within the competence of both the Government of Canada and the Government of Alberta. Consequently, this response contains information and observations from both levels of government.

*Any additional information and/or comment you may have on the above-mentioned allegations.*

Representation

The Lubicon Lake Band #453 (hereafter, "Lubicon Lake Band") was formally recognized under the *Indian Act* by a Government of Canada "Order in Council" dated November 13, 1973. The Lubicon Lake Band is thus the legal and political entity recognized by the Government of Canada, and acknowledged by the Government of Alberta, the Treaty 8 First Nations of Alberta and the Kee Tas Kee Now Tribal Council (comprised of the member Nations of: Loon River, Lubicon Lake Band, Peerless Trout, Whitefish Lake #459 and Woodland Cree First Nations) to represent the Lubicon population.

The Lubicon Lake Band is a "Custom Code" band, meaning that it elects its Chief and Councillors in accordance with its own rules and procedures rather than under the rules set out in the *Indian Act*. Canada plays no role under Custom Code elections other than recording the results.

The current leadership of the Lubicon Lake Band was elected in February 2013. The election resulted in a new Chief, [REDACTED] and a slate of Councillors being elected to a five-year term.

The Government of Canada does not recognize a Lubicon Lake Nation as separate and distinct from the Lubicon Lake Band. Where either nomenclature has been utilized by Canada in the past, this has been out of

deference to the title preferred by Lubicon's leadership at any particular time, but always in reference to the same Indigenous group, namely the Lubicon Lake Band #453. The Government of Canada and the Government of Alberta both recognize the current leadership as the Band's legitimate representatives in the land claim negotiations.

#### Land Claim Negotiations

The Government of Canada is currently negotiating and working with the duly elected leadership of the Lubicon Lake Band, and the Government of Alberta, in a spirit of partnership and co-operation, to develop a final negotiated settlement that will address the Lubicon's community needs and longstanding treaty-related grievances and that will lead to better living conditions and new economic opportunities for the benefit of members of the Lubicon Lake Band.

Negotiations to settle the Lubicon Land Claim have occurred since 1980 and it has always been Canada's practice to conduct negotiations with the duly elected Chief and Council. Following the February 2013 election, ongoing negotiations have been conducted with Chief Laboucan and elected Councillors.

The Government of Canada and the Lubicon Lake Band signed a Negotiation Framework on December 1, 2014 prior to commencing the current negotiations. Since that date, negotiations between the Government of Canada, the Lubicon Lake Band and Government of Alberta have been productive and steady progress is being made towards a resolution.

The negotiators representing the Government of Canada, the Government of Alberta and the Lubicon Lake Band have made progress on the main elements of a settlement that would be submitted to their respective principals for approval. The Government of Alberta, which joined this round of negotiations early in 2015, has been an active participant in negotiations.

#### *Has a complaint been lodged by or on behalf of the Lubicon Lake Nation?*

Over the past number of years, Canada has received a number of communications from the Human Rights Committee, early warning and urgent action requests from the Committee on the Elimination of Racial

Discrimination, and letters of inquiry or requests for information from various Special Rapporteurs and Independent Experts with respect to the Lubicon Lake Band. These inquiries were conveyed to Canada via the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) or the Special Procedures Branch (Office of the High Commissioner for Human Rights). Canada notes that the Independent Expert on the promotion of a democratic and equitable international order will obtain comprehensive information about any complaints that have been lodged by or on behalf of the Lubicon Lake Band through the OHCHR Secretariat and the Special Procedures Branch.

*Please provide any additional information about the measures taken, or to be taken, to implement the recommendations of the Human Rights Committee, the Committee on Economic Social and Cultural Rights and the United Nations Special Rapporteur on the rights of indigenous peoples regarding the Lubicon Lake Nation?*

In the past, the Human Rights Committee and the United Nations Committee on Economic Social and Cultural Rights recommended that Canada make every effort to resume negotiations with the Lubicon with a view to finding a solution to the claims of the Band that ensures the enjoyment of their human rights.

Since the 1980's, there have been a number of attempts to resolve the Lubicon Lake Band claims through negotiation. Settlement offers were made to then-Chief [REDACTED] and the Band Council in 1988, 1992, 2003, and 2006. All these negotiations were unsuccessful and the underlying issues of the Lubicon Lake Band's claims remained unresolved. From 2003 to 2009 negotiations effectively stalled, despite sporadic attempts to resume them such as a 2006 offer by the Government of Canada. Negotiations, which remained stalled between 2009 and 2013 due to the pre-existing impasse in positions, now had an added obstacle to renewed negotiations with a governance dispute within the Lubicon Lake Band. However, as noted above, negotiations on the land claim agreement with the Lubicon Lake Band resumed in fall of 2014 following discussions which commenced soon after the February 2013 election of the current recognized leadership, and are currently ongoing.

On a more general note, the Government of Canada is committed to building a renewed nation-to-nation relationship with all Indigenous people that is based on recognition of rights, respect, co-operation and partnership. To this end, the Government of Canada is also committed to adopting and fully implementing the United Nations Declaration on the Rights of Indigenous Peoples in accordance with the Canadian Constitution. Indeed, all governments in Canada understand and are committed to this process and to building renewed partnerships with all Indigenous people.

*Please provide any additional information about measures taken to ensure the Lubicon peoples are not adversely impacted by resource exploitation in the traditional territory of the Lubicon.*

The Government of Canada and the Government of Alberta view the traditional territory as lying within the territory covered by Treaty 8 and take the position that any land rights of the Lubicon are governed by the terms of that treaty. The Lubicon have selected certain lands within the traditional territory to be reserved for its exclusive use.

Since 1991, the Government of Alberta has prohibited new resource development on those lands falling within the boundaries of the selected reserve lands, unless the Lubicon Lake Band consents to a development. Thus, no logging or oil and gas extraction occurs within these lands without the Lubicon Lake Band's consent.

*Any additional information about the right of Lubicon peoples' prior and informed consent on matter affecting their lives, including through representatives chosen by themselves in accordance with their own procedures.*

In Canada, whenever asserted or established Aboriginal or treaty rights may be adversely affected by proposed Crown (government) conduct, governments have a legal obligation to consult the Indigenous groups involved and, where appropriate, accommodate their rights. Resource development projects are one type of activity that may require such consultation.

Importantly, the duty to consult applies not only to established rights, but also to asserted rights. The scope and content of the duty to consult with any given Indigenous group is proportionate to the strength of claim to an asserted right or the certainty of an existing right and to the seriousness of the potential adverse effect of the contemplated activity on those rights.

If an Indigenous group is not satisfied with a consultation process that has occurred, government decisions can be the subject of judicial review by a court. Canadian courts, on judicial review, will assess the adequacy of the consultation process and any accommodation measures. Government decisions and actions may be quashed where consultations or accommodations have been inadequate.

The Government of Canada is committed to building a renewed nation-to-nation relationship with all Indigenous people that is based on recognition of rights, respect, co-operation and partnership. All governments in Canada understand and are committed to operating within the boundaries of the legal framework governing consultations with Indigenous groups. Federal, provincial and territorial governments have developed consultation policies that inform their decision-making processes with respect to activities that may impact Aboriginal and treaty rights. Such policies are intended to ensure that governments in Canada meet their consultation obligations to Indigenous peoples. Additionally, opportunities for consultation are built into many environmental review processes as one of the mechanisms for involving Indigenous groups whose rights may be affected by a proposed project.

As part of its commitment to reconciliation and building a nation-to-nation relationship, the Government of Canada has committed to the adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples in accordance with the Canadian constitution. Further, the Government of Canada is committed to working in partnership with Indigenous communities on issues that affect them, seeking consensus where possible and encouraging project proponents to engage effectively with Indigenous communities that might be impacted by such projects.