

"The People Left Out of Treaty 8"

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in Partial Fulfillment of the Requirements for a Masters Degree

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Abstract

The story of how and why the Canadian government negotiated Treaty 8 with First Nations living in north-western Canada, and its attitude toward the people whom it casually left out of treaty, provide an excellent example of how the Canadian government approached treaty negotiations in the late nineteenth and early twentieth centuries. Treaty 8 is both typical of the other numbered treaties negotiated with First Nations in the late nineteenth century in western Canada as well as different, in that it was the first of the "northern" numbered treaties negotiated with First Nations.

This thesis looks at Treaty 8 in both ways: how it illustrates a common approach to treaty making on the part of the Canadian government, and how it differs from other treaties and other treaty negotiation processes. The thesis also tells the story of the people left out of Treaty 8 negotiations in northern Alberta and north-western Saskatchewan, as well as their struggles to obtain justice for this governmental oversight.

This thesis looks at a number of issues related to Treaty 8 which earlier historians have either not focused on or overlooked. The first is that the territory covered by Treaty 8 is greater than the area into which treaty commissioners were sent in 1899 and 1900. The second related point is that the government policy of the time that treaties should be

negotiated at as little expense and cost to the government as possible
meant that people were left out of treaty negotiations.

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Dedication

This thesis is dedicated to the First Nations people who have been living in the area covered by Treaty 8 for centuries and who have never ceded or surrendered their title to the land, and who are still struggling to get the federal and provincial governments to negotiate a just settlement of their outstanding claims.

Table of Contents

Permission to Use.....	i
Abstract.....	ii
Acknowledgements.....	iv
Dedication.....	v
Table of Contents.....	vi
List of Illustrations.....	vii
Preface.....	viii
1. An Overview of the Issues Related to Treaty 8.....	1
2. The People Left Out of Treaty 8 in Northern Alberta.....	33
3. Treaty 8 and Northern Saskatchewan.....	72
4. Conclusion.....	93
Appendix I.....	115
Bibliography.....	118

List of Illustrations

Map of Treaty 8 Land Area.....	11
Daishowa map of Traditional Lubicon Territory.....	100

Preface

This thesis raises some troubling questions about how the Canadian government negotiated Treaty 8 with First Nations living in northern Alberta, north-western Saskatchewan, north-eastern British Columbia and the southern part of the Northwest Territories in the late nineteenth and early twentieth centuries. By telling this story, it is not my intention to diminish the importance of the treaties or the treaty-making process to First Nations in Canada. The treaties negotiated between Canada's First Nations and the governments of Canada are seen by First Nations as their "bridge to the future" and should be respected as such.

I worked in international development for sixteen years, and learned from that experience that it is critically important that people name their own reality. As a Canadian, I acknowledge that I am bound by the treaties signed between First Nations and the governments of Canada, but as a non-Aboriginal person I also know that they have far less impact on me than on Canada's Aboriginal people.

I have been a "Friend of the Lubicon" since 1988 and it is my hope that this thesis will contribute to the efforts of the people left out of Treaty 8 in northern Alberta, including the Lubicon, to achieve their goal of a just settlement of their outstanding claims.

The People Left Out of Treaty 8

Chapter 1: An Overview of the Issues Related to Treaty 8

The story of how and why the Canadian government negotiated Treaty 8, the way in which the government interpreted and implemented its treaty obligations, and its attitude toward the people whom it casually left out of treaty negotiations provides an excellent example of how the Canadian government approached treaty negotiations in the late nineteenth and early twentieth centuries. The issues raised by the negotiation and implementation of Treaty 8 also point to the steps which federal and provincial governments need to take to build positive relationships with Aboriginal peoples in Canada in the future.

By 1870, the fledgling Dominion government had decided that it needed to open up the Canadian west to white settlement and turned its attention to gaining control over the fertile farmland of the western plains. The approach chosen by the Dominion government to obtain the surrender of Indian territory was to negotiate a treaty, a practice that had been used to clarify relationships between Aboriginal people and the governments of both France and Britain since European contact. "Treaties between the Aboriginal and European nations (and later between Aboriginal nations and

Canada) were negotiated and concluded through a treaty-making process that had roots in the traditions of both societies.”¹

Western First Nations’ reasons for wanting to sign treaties with the Dominion government in the 1870s were complex but largely pragmatic. By the mid 1800s, the fur trade in the west was in decline, white settlers were entering Indian territory in greater and greater numbers, and First Nations were determined to do what they could to get assurances from the government that there would be protection for their way of life and that they would continue to be able to live as before.

First Nations became even more anxious to negotiate treaties with the government after the Hudson’s Bay Company (HBC) sold Rupertsland to the Dominion of Canada in 1870. Prior to 1870, the HBC had provided some relief to sick, aged, and destitute Indian people in the area that it controlled because of the relationship which the HBC had developed with First Nations and Metis people in Canada during the fur trade era. When Rupertsland was sold by the HBC to the Dominion of Canada in 1870, a clause in the deed of surrender relieved the company of any responsibility for the welfare of Aboriginal people living in that territory and passed that responsibility to the federal government.² The British North America Act of 1867 also

¹ Royal Commission on Aboriginal Peoples, Final Report. Volume 1: Looking Forward, Looking Back, (Ottawa: Royal Commission on Aboriginal Peoples, 1996), p. 119

² Arthur J. Ray, Jim Miller, and Frank Tough, Bounty and Benevolence: A History of Saskatchewan Treaties (Montreal and Kingston: McGill-Queen’s University Press, 2000), p. 152

assigned responsibility for "Indians and lands reserved for the Indians" to the federal government.³

Soon after the transfer, missionaries and HBC officials in the unceded territory began sending petitions to the government on behalf of sick or destitute Indian people. The Plains Indians "had been demoralized by the ravages of epidemics and the illicit whiskey trade, and as the 1870s passed, they witnessed the rapid disappearance of their principal means of sustenance, the buffalo."⁴

On the prairies, the petitions on behalf of First Nations wishing to enter into treaty with the federal government coincided with the government's decision to open up the western plains to white settlement. Between 1871 and 1877 the government negotiated the first seven "numbered" treaties with Indians living in this area. The treaties followed a general format developed during the negotiations of Treaty 3 in 1873 of reserve lands granted based on 640 acres per family of five, cash payments upon signing of the treaty, schools on reserves, and annuities. In exchange, the treaties state that the Indian people agreed to "cede, release, surrender and yield to her Majesty the Queen" a specified area of land. Later treaties included additional provisions like that of the "medicine chest" in Treaty 6.

In 1876 the Dominion of Canada signed Treaty 6 with Indian bands in

³ E. Brian Titley, A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada (Vancouver: University of British Columbia Press, 1986), p. 8

⁴ Titley, p. 10

central Alberta and Saskatchewan. The areas north and west of this area, covering what is now part of the Northwest Territories and the northern half of Alberta and Saskatchewan, made up what was referred to as the "unceded portions of the Territories." After the signing of Treaty 6, Indian people living in the northern part of Saskatchewan and Alberta petitioned for assistance from the government. The response of the government was to deny any responsibility for non-treaty Indians, claiming that they continued to be the responsibility of the HBC.⁵ Government policy throughout this period was to secure lands needed for agricultural settlement from First Nations at as little cost to the government as possible. Since northern land was considered unsuitable for agriculture there was no interest on the government's part in negotiating treaties and therefore no assistance would be provided. This position was made clear by Lawrence Vankoughnet, deputy superintendent general of the Department of Indian Affairs, in a letter that he wrote on February 22, 1890.

With reference to the question of the making of further Treaties with the Indians of the NWT, the undersigned begs to report that on the 27th of May 1884, Sir John Macdonald, the then Supt. General, stated as follows in regard to this matter: "I am of the opinion that the making of a Treaty may be post-poned for some years, until there is a likelihood of the country being required for settlement purposes."

As respects to the obligation resting upon the Government, to come to the relief of Indians who are in a state of starvation, and with whom no Treaty relations exist, the undersigned is of opinion, that the Government should act towards them, as it would in the case of any of Her Majesty's subjects, be they White or red who might be

⁵ Ray, Miller, and Tough, p. 153

placed in a similar position, and this has already been done, in so far as the Indians above referred to are concerned . . . to the extent, subject to certain limitations, to which the Hudson's Bay Company were authorized to grant relief.⁶

In his book As Long As This Land Shall Last, Rene Fumoleau refers to this policy as "no treaty no help."⁷ He says that "during the years between 1870 and 1890, the Bishop of St. Albert, Vital Grandin, OMI, wrote many times to the Prime Minister of Canada and to the Lieutenant Governor of the Northwest Territories 'respecting the poor Indians . . . not yet looked after by the Government'. To Grandin's requests on behalf of the Indian people, Mr. Thomas Wadsworth of the Indian Department replied 'as they [the Indians] were not then under the Treaty he could not do anything for them.'⁸

Government records show that Indian people living north of Treaty 6 in what later became Saskatchewan began petitioning the federal government for a treaty in 1879. On February 7, 1879 a petition was sent to the "Honorable Governor Laird from the Indians residing in the Stanley District comprising Stanley, Lac La Ronge and Pelican Narrows" asking the government to negotiate a treaty with them. The petition states

We write to you, Hon. Sir, to lay before you our claims, and this we do because we find we are unable to get sufficient furs to provide us with food and clothing, owing to the reduction in the price of furs and the scarceness of the animals upon which we have to depend for our living. Again, we the Indians residing here have not land so easy for

⁶ Ray, Miller and Tough, pp. 153-154

⁷ Rene Fumoleau, OMI, As Long As This Land Shall Last: A History of Treaty 8 and 11, 1870-1939, 2nd Edition (Calgary: University of Calgary Press, 2004), p. 19

⁸ Fumoleau, p. 14

cultivation as our brother Indians who live in the Saskatchewan District. We are unable to grow potatoes and with the assistance of the Treaty we should be able to get tools or implements for cultivation and thus be able to farm more land. Should we not get the Treaty before next winter sets in we fear many of us must suffer through starvation as at the present time we have scarcely any clothing to wear, nor have we any means to get sufficient to clothe our families before the next winter sets in unless the Government comes to our assistance with the Treaty.⁹

The government remained unmoved. Treaties were not negotiated at the request of First Nations but when the government decided that it needed Indian land for development.

This situation changed abruptly in 1890 when it was discovered that there were vast quantities of petroleum in the District of Athabaska and the Mackenzie River valley. "In 1890-91, a geological survey estimated that there were 4,700 million tons of tar in the region, as well as natural gas, bitumen, oil and pitch."¹⁰ The federal government now became very interested in negotiating a treaty with the Indians in the Peace River and Athabaska regions, and began to make preparations for a new treaty. In December 1890 Edgar Dewdney, Minister of the Interior, wrote to Lawrence Vankoughnet, deputy superintendent general of the Department of Indian Affairs, saying "I think you had better prepare a memo . . . re making a

⁹ National Archives of Canada, RG 10 Records of the Department of Indian Affairs [hereafter RG 10] vol. 3692, File 13,979 (Ile a la Crosse Agency – Correspondence regarding a petition of the Stanley, Lac La Ronge and Pelican Narrows Indians asking that a treaty be made with them. 1879), microfilm reel C-10121.

¹⁰ R.B. McConnell, "Report on a Portion of the District of Athabasca Comprising the Country Between the Peace River and the Athabasca River North of Lesser Slave Lake" (Ottawa, 1893) as cited in Olive Dickason, Canada's First Nations: A History of Founding Peoples from Earliest Times, Third Edition (Don Mills: Oxford University Press, 2002), p. 363.

treaty with the Indians in the Athabaska and Peace River Districts" and asking Vankoughnet "Have you any idea of the number of Indians we will have to deal with?"¹¹

The Privy Council Report of 1891 stated that

(o)n a report dated 7th of January 1891, from the Superintendent-General of Indian Affairs, stating that the discovery in the District of Athabaska and in the MacKenzie River Country, that immense quantities of petroleum exist within certain areas of those regions . . . and further consideration that several Railway projects . . . may be given effect to at no such remote date as might be supposed, appear to render it advisable that a treaty or treaties should be made with the Indians who claim those regions as their hunting grounds, with a view to the extinguishment of the Indian title in such portions of the same, as it may be considered in the interest of the public to open up for settlement.¹²

A letter was then sent from the Department of Indian Affairs to William Clark of the Hudson's Bay Company in Winnipeg on February 7, 1891 asking for clarification of numbers as well as providing guidelines for the territorial boundaries of the treaty:

"Commencing at a point in the eastern boundary of Alberta, east of the 112 Meridian, where the northern boundary line of Treaty 6 intersects the height of land, as shown on the map of the Dominion made in the Department of the Interior and dated 1887, thence following said height of land in a north-easterly direction to the 58th parallel of the North Latitude, then easterly along the said 58th parallel to the 105th Meridian, thence north to the 63rd parallel, thence following the 63rd parallel to the summit of a northern spur of the Rocky Mountains which divides the waters of the MacKenzie River from those of the Yukon River, thence northerly following the summit of said spur of mountain to the 60th parallel at the northern boundary of British Columbia, thence eastwardly following the northern

¹¹ RG 10, vol. 3848, File 75,236-1, (Treaty 8 – Treaty Negotiations between the Indian Affairs Department and the Native People, 1891-1899), microfilm reel C-10149.

¹² Fumoleau, pp. 27-28

boundary foresaid to the north-east corner of the British Columbia boundary at the 120th Meridian, thence southerly following the easterly boundary of B. Columbia to the northern boundary of Treaty 7, thence eastwardly along the boundary of Treaty 7 until it intersects the westerly boundary of Treaty 6, thence north-westerly and easterly following the limits of Treaty 6 to the point of beginning containing approximately 319,000 square miles."¹³

From this letter, it would appear that the federal government had generally determined the extent of the area to be covered by Treaty 8 as early as February of 1891. The boundaries described in the departmental letter were later changed prior to the signing of the treaty to include a portion of north-eastern British Columbia and the south shore of Great Slave Lake. The decision to include all of British Columbia situated east of the Rocky Mountains was made because that was a route to the Klondike. Therefore, the northeastern part of British Columbia including the districts of Fort St. John, Fort Nelson, Fort Halkett and Hudson's Hope were added to the Treaty 8 area, comprising an additional 104,000 square miles.¹⁴ In the spring of 1899, it was decided to further expand the treaty area to include part of Great Slave Lake when reports that gold had been discovered at the eastern end of Great Slave Lake convinced the government to include the south shore of the lake. "The result was the greatest area to be covered by treaty to that point, 324,900 square miles (841,491 square kilometers)."¹⁵

¹³ RG 10, vol. 3848, File 75,236-1, microfilm reel C-10149.

¹⁴ Dennis F. K. Madill, "Treaty Research Report: Treaty Eight," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986, p. 25

¹⁵ Dickason, p. 36

Treaty 8 historian Dennis Madill says that there was confusion about the western boundary of Treaty 8 for some time after the treaty was negotiated.

The treaty describes the boundary as the "central range of the Rocky Mountains" while the maps accompanying both the treaty and the enabling order-in-council, P.C. 2749, dated 6 December 1898, authorizing the signing of Treaty Eight, indicate the western boundary of the treaty to be the height of land separating the Arctic drainage system from the Pacific drainage system, a more westerly range of mountains. The boundary question has been addressed by the Department of Indian Affairs on several occasions and it has been concluded that the more westerly range of mountains was the intended boundary of Treaty Eight.¹⁶

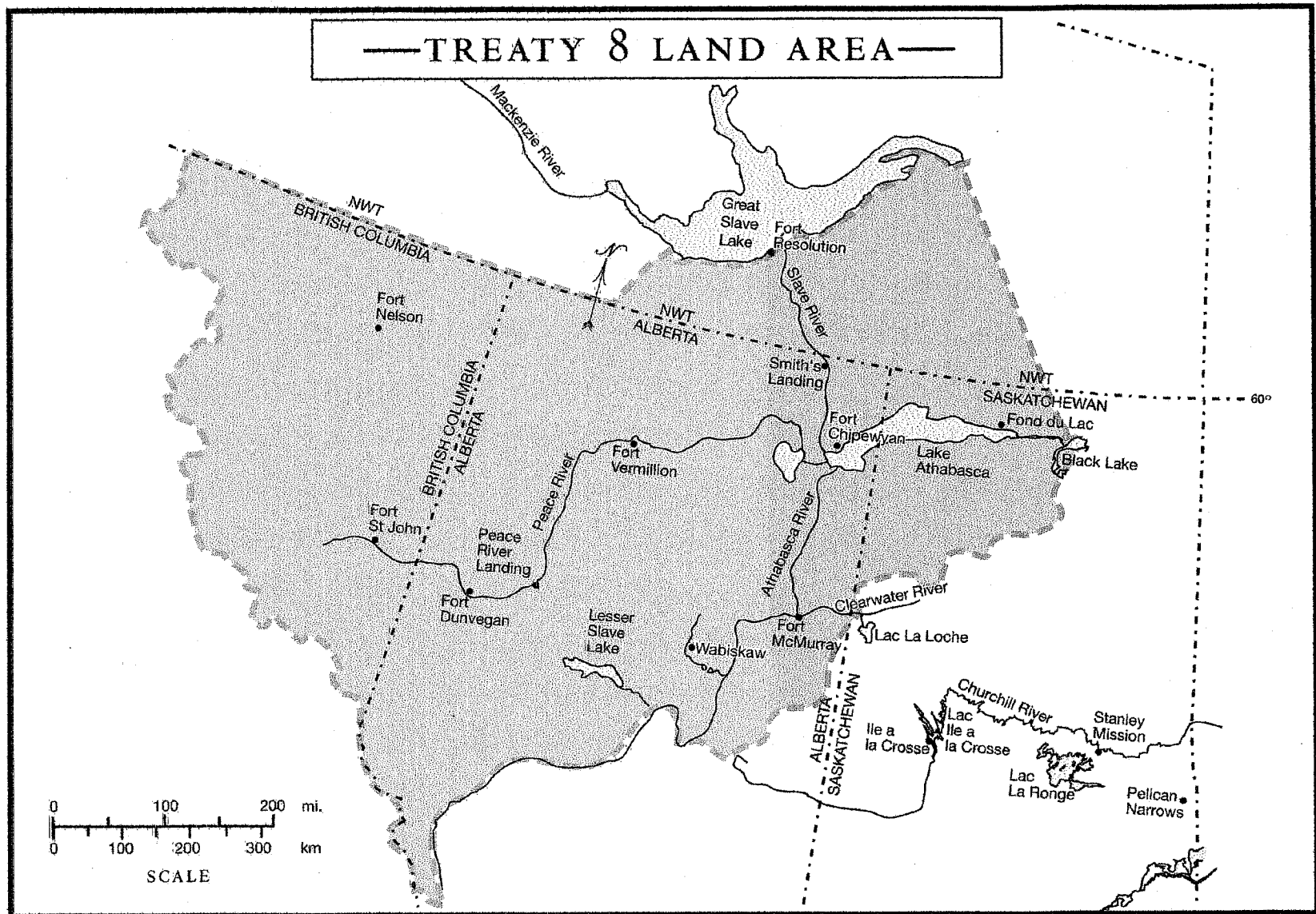
Historian Arthur J. Ray has written a number of articles on Treaty 8 and British Columbia which suggest that the "boundary question" is anything but resolved and that the "lingering ambiguities of Treaty 8" are still an issue.¹⁷

¹⁶ Madill, p. 25

¹⁷ Debate about the western boundary of Treaty 8 has continued up to the present time and has been a central issue in efforts by some British Columbia First Nations to negotiate land agreements with the federal and provincial governments. Historian Arthur J. Ray, in an article entitled "Treaty 8: A British Columbian Anomaly", says that the confusion over the western boundary of Treaty 8 was a key issue in the lawsuit launched in 1983 by the McLeod Lake Sekani against Canada and British Columbia for the right to adhere to Treaty 8. In their suit, the Sekani claimed that the western boundary of Treaty 8 was the Pacific-Western Arctic Divide, rather than the Rocky Mountains, therefore their traditional territory was included in the area covered by Treaty 8. Ray says that "one of the band's goals was to take advantage of the fact that this accord offered more generous land allotment provisions than they had received from the [British Columbia] reserve commission in 1892." An out of court agreement was finally reached with the McLeod Lake Sekani in 1999 which recognized their right to join Treaty 8 and gave them additional land and resources. Ray says that confusion over the western boundary of Treaty 8 was partly due to fact that the Treaty 8 commissioners had a poor understanding of the geography of the area covered by Treaty 8. In the Autumn 2000 edition of BC Studies, Professor Robert Irwin, who, like Ray, had appeared as an expert witness in the McLeod Lake Sekani suit against the federal and provincial governments, published a critique of Ray's research in an article entitled "Treaty 8: An Anomaly Revisited". Irwin's article questions the accuracy of a number of Ray's assertions regarding the boundary issue. The principle objective of his article is to provide support for the B.C. government's position that the western boundary of Treaty 8 never included the territory of the McLeod Lake Sekani and that, by agreeing to the McLeod Lake Sekani's petition to be included in Treaty 8, the B.C. government was not correcting an historical wrong but rather agreeing to extend the territory covered by Treaty 8 through an adhesion. In his response to Professor Irwin published in the same issue of BC Studies, Professor Ray effectively defends his original arguments against Professor Irwin's attacks.

There is little evidence that the Dominion government made much effort prior to 1899 to get an accurate estimate of the number of people to be included in Treaty 8 negotiations other than in the Peace River and Athabaska regions of northern Alberta and the southern part of the Northwest Territories, the area where negotiations were focused. The government clearly wanted Treaty 8 to cover as much of the previously unceded territory in western and northern Canada as possible, but was not prepared to send treaty commissioners to negotiate with First Nations other than in the area affected by prospecting activity, including north-eastern British Columbia. Negotiations were therefore concentrated on northern Alberta, the southern part of the Northwest Territories, and the Fort St. John area of north-eastern British Columbia where Indian people had previously refused to allow prospectors to cross their land until a treaty had been signed. The only Treaty 8 negotiations held on land that later became Saskatchewan were conducted by Commissioner David Laird in 1899 at Fond du Lac on Lake Athabaska. Therefore most of the people in northern Saskatchewan who had been petitioning for a treaty for at least twenty years prior to 1899 were left waiting until 1906 when Treaty 10 commissioners finally traveled into northern Saskatchewan to meet with them. At least in the case of Treaty 8, the government's approach to negotiations made it inevitable that people would be left out of treaty.

—TREATY 8 LAND AREA—



In my view, it is curious that earlier historians of Treaty 8 have failed to point out this discrepancy between the large geographic area covered by the treaty and the fact that negotiations were focused primarily in one part of the treaty area. They also focus little attention on the people left out of Treaty 8 in northern Alberta and northern Saskatchewan.

Arthur J. Ray's work on Treaty 8 has focused mostly on the history of Treaty 8 as it relates to the British Columbia government's policies toward aboriginal land claims.

Rene Fumoleau, probably the best known Treaty 8 historian, provides the most thorough and detailed description of Treaty 8 negotiations as well as oral testimony from Treaty 8 elders who were present when the treaty was signed. He does not, however, talk about the people left out of Treaty 8 negotiations.

Dennis Madill's "Treaty Research Report: Treaty 8" provides an excellent overview of the issues related to Treaty 8 and does talk about the people in the "isolated communities" of northern Alberta who were left out of treaty negotiations but Madill does not point out the difference between the territory covered by the treaty and the area included in negotiations.

Richard Daniel, another historian who has done a lot of work on Treaty 8 in Alberta, has focused most of his attention on the government's failure to live up to the spirit and intent of the terms of the treaty. He has also done important research on the "isolated communities" in northern Alberta.

Richard Price and Shirleen Smith wrote an article in the 1993-94 issue of the Native Studies Review which describes Treaty 8 as an Alberta treaty.

The focus of their work is the treaty promises related to the protection of traditional livelihoods and what has happened to those treaty rights since the treaty was signed. They do not talk about the people left out of Treaty 8 or the territorial issue.

In Bounty and Benevolence, Miller, Ray, and Tough say that one of the problems with Treaty 8 is that it was negotiated in haste and that some groups were left out of negotiations, most notably the Lubicon Cree.¹⁸ It is noted that a number of the groups left out of negotiations in 1899 were met with in the summer of 1900 when Treaty Commissioner James Macrae returned to the area to meet with some of the people left out in 1899. But the book does not talk about Treaty 8 as it impacted northern Saskatchewan nor the fact that the territory which the government claimed had been ceded through treaty negotiations was far greater than the area covered by the actual negotiations.

The only other treaty historians who have talked about the Treaty 8 commissioners failure to carry out their duty in meeting with more of the Indian people living in the area north of Treaty 6 are Kenneth Coates and William Morrison in the "Treaty Research Report: Treaty 10", which was published in 1986.

¹⁸ Miller, Ray, and Tough, p. 165

Government correspondence indicates that it was expected as late as April 1891 that Treaty 8 commissioners would travel into northern Alberta during the summer of 1891 or 1892. Nothing happened, however, until 1897 when gold was discovered in the Klondike and it became important to the government once again to control access to the mineral-rich north. The lack of action by the federal government between 1891 and 1898 may be explained in part by the death of Sir John A. Macdonald in June, 1891 and the subsequent crisis of leadership within the ruling Conservative party.¹⁹ A Liberal government was elected in 1896, and it was under this government that Treaty 8 negotiations were finally conducted. The Klondike Gold Strike of 1897 was the spark that rekindled the government's interest in negotiating a treaty and ensuring access to the mineral wealth of the north.

Initially the government's intentions was to send a treaty commission into northern Alberta in 1898 to negotiate Treaty 8, but a memo from A.E. Forget, Indian Commissioner for Manitoba and the North West Territories, to J.A.J. McKenna in the Department of Indian Affairs on April 16, 1898 indicates that the government was persuaded to postpone negotiations until 1899.

I have had an interview with his Lordship Bishop Grouard, Roman Catholic Bishop of Athabaska, respecting the proposed Treaty with the Indians, and from him I learn that it will be impossible to notify the Indians in time to meet the Commissioners at the various points mentioned in my official correspondence with the Department. The Bishop thinks that the best course to pursue would be to fix upon a

¹⁹ History of the Canadian Peoples: 1867 to the Present, Second Edition, ed. Alvin Finkel and Margaret Conrad (Toronto: Copp Clark Ltd., 1998), p. 58

date for next year and send out notices as early as possible this season addressed to the Hudson's Bay and other traders and to all Missionaries of the Districts, with the request to let the Indians know of the intention of the Government to meet them. As the Indians are not expecting this thing to be done this summer no disappointment will be caused by its postponement for a year.²⁰

Forget's contention that the Indian people were not expecting treaty negotiations seems to have underestimated Aboriginal people's determination to get the government to negotiate with them before they would allow prospectors on their land. On June 28, 1898 Forget wrote to McKenna again saying

I enclose a despatch from Athabaska's Landing published in this morning's issue of the Winnipeg Free Press with the request that you will please draw the Minister's attention to the report mentioned therein that five hundred Indians camped at Fort St. John are opposing the Mounted Police and miners getting further north until treaty is made with them. Whether there is any foundation for this report or not, I think no time should be lost in notifying the Indians of the intention of the government to treat with them next Spring.²¹

McKenna responded to Forget's letter on July 6, 1898 by assuring him that the government did intend to negotiate a treaty with the Indians in the following year but at the same time underscoring the importance of minimizing government expenditures and focusing the efforts of the treaty commission on the area where there had been tension caused by white prospectors. "It is not the Minister's intention", he said

that any large expenditure should be incurred, or that you should make any extraordinary effort to penetrate further into the country. His idea is that if you personally meet some of these Indians, the news would soon travel among them that the Commissioner had

²⁰ RG 10, vol. 3848, File 75,236-1, microfilm reels C-10149-10150

²¹ RG 10, vol. 3848, File 75,236-1, microfilm reels C-10149-10150

come to the country to represent the Government and officially assure them that their rights would be protected, and that this would make the notices which are to be sent out more effective.²²

This letter is interesting for a number of reasons. First, it confirms that the government's principal interest now was in negotiating with the Aboriginal people in the Peace River area who had been involved in clashes with prospectors and who might try to put obstacles in the way of northern mineral development. Second, the letter illustrates the government's parsimonious attitude toward treaty negotiations with Indian people and their determination to get Aboriginal surrender of territory at as little cost and effort to the government as possible. Third, the letter indicates that the government felt that as long as they made some effort to "meet some of the Indians" it was appropriate to expect other Indian people in the area to travel to meet them, regardless of their personal circumstances. Clearly the government was trying to dodge its responsibility to ensure that the Commissioners met with all of the Indian people in the area and to put the onus on the Aboriginal people to seek out and meet with the treaty commissioners.

Other correspondence in 1897 and 1898 between the government and people living in the area to be covered by Treaty 8 gives further evidence that the government was persuaded to focus Treaty 8 negotiations on the territory between Edmonton and the Pelly River because of mining activities

²² RG 10, vol. 3848, File 75,326-1, microfilm reels C-10149-10150

in the north and Indian resistance to the presence of white prospectors on their land. On December 2, 1897 NWMP commissioner L. W. Herchmer wrote to Ottawa saying

I have the honour to draw your attention to the advisability of the Government taking some immediate steps towards arranging with the Indians not under Treaty, occupying the proposed line of route from Edmonton to Pelly River. These Indians are said to be very turbulent, and are liable to give very serious trouble when isolated parties of miners and travellers interfere with what they consider their vested interests. At the present time the Half-Breeds of Lesser Slave Lake are dissatisfied with the presence of the Police in that District, and the numerous parties of Americans and others between that point and Peace River will not improve the situation.²³

By 1897, however, prospectors had also moved into north-eastern British Columbia, and the government was being urged to include Indian people in that area in negotiations for Treaty 8. In the same letter, Herchmer said "(t)he Beaver Indians of Peace River and the Nelson are said to be inclined to be troublesome at all times, and so also are the Sicamies [sic] and Nihamies [sic], were inclined to be troublesome, and that the Halfbreeds were likely to influence them in that direction."²⁴

The problem for the federal government was that the government of British Columbia did not recognize Aboriginal title. The federal government found an interesting solution to this problem. The federal government decided to notify the British Columbia government of its intention to negotiate a treaty with the Indian people living in the north-eastern corner

²³ L.W. Herchmer to Comptroller of NWMP, 2 December 1897 as quoted in Bounty and Benevolence by Miller, Ray, and Tough, Chapter 10, p. 158

²⁴ Miller, Ray, and Tough, p. 160

of British Columbia but not to ask for permission.²⁵ As well, Ottawa decided not to ask the provincial government to contribute to the costs of a treaty and to only request that the province set aside reserve lands once it had been determined that that would be necessary at the conclusion of treaty negotiations.

With the decision taken to include a portion of north-eastern British Columbia in Treaty 8 negotiations, the Privy Council order of June 27, 1898 setting up the treaty commission was written so as to give the commissioners discretion to determine lands and people to be included in the treaty.²⁶

The treaty commission which was dispatched in the spring of 1899 to negotiate Treaty 8 included three commissioners, David Laird, James Ross, and J.A.J. McKenna, and a number of other staff. They were accompanied by a three-person Metis Commission under the leadership of Major James Walker, a retired NWMP officer. It was the responsibility of this commission to offer the Metis living in the Treaty 8 area "scrip", pieces of paper which entitled the bearer to 240 acres of land or \$240 in exchange for extinguishment of the Metis' aboriginal title to the land.

The joint commission left Edmonton on May 29, 1899 in horse-drawn wagons. Travel was very slow and difficult, over roads made from logs which had been cut from the bush, with muskeg and stumps making travel

²⁵ Madill, pp. 33-34

²⁶ Ray, Miller, and Tough, p. 160

even more difficult. When the commission arrived at Athabaska Landing, everything was loaded onto two scows and a York boat for the trip up the Athabaska and Slave Rivers to Lesser Slave Lake. "The boats had to be pulled by harnessed men called 'trackers'. They made eight miles in the first two days."²⁷

Some efforts had been made in advance of the expedition to collect information on the potential numbers of Indians and "half-breeds" living in the area where negotiations would take place. In a government "Memorandum Respecting Indian Treaty" written in 1898 it was estimated that the number of Indians who would be covered by Treaty 8 would be 2700 and 1700 "half-breeds."

Nevertheless, it is clear that the government did not have an adequate appreciation either of the vastness of the territory to be traversed or of the significant transportation challenges that would confront the Commission. As a result, the time-table for negotiations was completely unrealistic. The commission arrived at Lesser Slave Lake, the first place where it was to conduct negotiations, on June 19, eleven days behind schedule. Fortunately, Commissioner Ross had arrived on June 6 and had explained to the assembled Indians the purpose of the treaty and asked them to elect a chief and headmen, a "novel idea in the northern bush where decision-making had always been by consensus."²⁸

²⁷ Goddard, p. 9

²⁸ Goddard, p. 9

Negotiations began the day after the commission arrived. Despite the fact that people like McKenna within the Department of Indian Affairs had earlier argued that there was no need to offer northern Indians terms as "generous" as those offered Indians on the plains where the land was more valuable, these northern Indians were offered terms similar to those in the other numbered treaties of the prairies largely because David Laird insisted that the terms had to be similar.²⁹ The Indians present at the negotiations in Lesser Slave Lake were offered land based on one square mile for each family of five, cash annuities, and cash paid to everyone upon signing. The written text of the treaty also stated that the Indians "shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country . . . saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes."³⁰ The primary concern of the Indian people who met with the Treaty 8 Commissioners in 1899 and 1900 was to gain the right to continue to hunt, fish, and trap freely over the land that they had traditionally occupied. They did not want to be confined to reserves and most of them did not want to take up agriculture. The reports of the commissioners indicate that they

²⁹ Madill, p. 30

³⁰ Text of "Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc." Reprinted from the 1899 edition by Roger Duhamel, F.R.S.C., Queen's Printer and Controller of Stationery, Ottawa, 1966.

were only successful in getting the Indian people to agree to sign Treaty 8 because they were offered guarantees that their hunting, trapping, and fishing rights would not be interfered with, and that the only regulations that would be placed on hunting and trapping in the area would be to the advantage of the Indian people. This understanding of Treaty 8 is confirmed by Indian oral history of Treaty 8, yet these guarantees are not reflected in the written text of the treaty and have been at the heart of differences over the interpretation and application of the terms of the treaty since it was signed.

Witnesses to the treaty negotiations at Lesser Slave Lake commented on the Commissioners' lack of knowledge of the northern Indians and their way of life. James Cornwall, who assisted with transportation for the treaty commission and who was present at the negotiations in Lesser Slave Lake and Peace River Crossing, reported in an affidavit that

the Commissioners had unfavorably impressed the Indians, due to lack of knowledge of the bush Indians' mode of life, by quoting Indians conditions on the Prairies. Chief Moostoos (the Buffalo) disposed of the argument by telling the Chief Commissioner that "a Plains Indian turned loose in the bush would get lost and starve to death."³¹

Father Fumoleau said in As Long As This Land Shall Last that Cornwall became "one of the most valiant fighters in support of the specific promises made by the Commissioners to the Indians at the time of the treaty." In his affidavit Cornwall also stated that

The treaty, as presented by the Commissioners to the Indians for their approval and signatures, was apparently prepared elsewhere, as it did not contain many things that they held to be of vital importance to their future existence as hunters and trappers and fishermen, free from the competition of the white man. They refused to sign the Treaty as read to them by the Chief Commissioner. . . The Commissioners finally decided, after going into the whole matter, that what the Indians suggested was only fair and right *but that they had no authority to write it into the Treaty* (italics added). They felt sure the Government on behalf of the Crown and the Great White Mother would include their request and they made the following promises to the Indians:

- a) Nothing would be allowed to interfere with their way of making a living, as they were accustomed to and as their forefathers had done.
- b) The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, and every effort would be made to improve their living conditions.
- c) They were guaranteed protection in their way of living as hunters and trappers, from white competition; they would not be prevented from hunting and fishing as they had always done, so as to enable them to earn their living and maintain their existence.

Much stress was laid on one point by the Indians, as follows: They would not sign under any circumstances, unless their right to hunt, trap and fish was guaranteed and it must be understood that these rights they would never surrender.³²

The treaty commissioners' report on the negotiations which took place in 1899 confirms Cornwall's account and spells out the "outside promises" which they felt they had to make in order to get the Indian leaders to sign the treaty. The report to the government dated September 22, 1899 presented by Commissioners Laird, Ross, and McKenna stated that they "had to solemnly assure [the Indians] that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in

³¹ Madill, p. 36

³² Fumoleau, pp. 73-74

order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it." The report also stated that the commissioners promised the Indians that they would be free from taxation and military service. Further, the Commissioners "assured them that the Government would always be ready to avail itself of any opportunity of affording medical service" after turning down their request for doctors. In the years following the signing of Treaty 8 the Indian people living in the area continued to be devastated by diseases unknown before the white man's arrival, yet the government did virtually nothing to assist them. "The Indians had asked for medical care before signing the Treaty. It had been promised to them. Pitifully little was provided in the years that followed. How much more could have been done and was not, is a question that history does not answer."³³

With the verbal assurances given by the Commissioners at Lesser Slave Lake, the first day of discussions regarding the terms of the treaty ended with a general consensus in favour of accepting the terms of the treaty. That night, the commission met to draw up the treaty document so that it could be presented to the Indians the next day. The language of this treaty document was very similar to the text of Treaty 7, which Commissioner Laird had also helped to negotiate, and did not contain many of the things

³³ Fumoleau, p. 139

that had been agreed to.³⁴ When the treaty document was read the next day, there were strong objections raised to the written text of the treaty, especially by some of the younger Indians. The government representatives were once again obliged to re-state the assurances that they had given the day before, assurances which the Indians present saw as guarantees that they would continue to be free to hunt and fish and trap as before. Only with these assurances were the commissioners able to get the six Indian leaders present to sign the treaty at the end of the second day of discussions.

The Treaty 8 Commissioners clearly knew that they had made commitments which they had not been authorized to make, but felt justified in making them in order to get the treaty signed. We have no record of whether they fought to get the government to honour the promises they had made or whether they raised objections when the promises which they had made were broken. We do know, however, that some of the missionaries who played a key role in convincing the Indians at the different forts to sign the treaty later regretted their role when they witnessed the government breaking its promises to the Indian people.

The treaty that was signed at Lesser Slave Lake became the document that was presented to all of the other groups who met with the Commission during that summer and the summer of 1900. Thus the people at Lesser

³⁴ Richard Daniel, "The Spirit and Terms of Treaty 8," in The Spirit of the Alberta Treaties, ed. Richard Price (Montreal: Institute for Research on Public Policy, 1979), p. 80

Slave Lake were the only people who had any input into the text of the treaty. Everyone else was required to sign adhesions to the treaty document as it was written up following the discussions at Lesser Slave Lake.³⁵

Because they were behind schedule, after the meeting at Lesser Slave Lake the Commission decided to divide into two separate treaty parties in an effort to reach all of the scheduled meeting points before the end of the summer. Laird went west with one group along the Peace River, while Ross and McKenna led another group east along the Athabaska River. By the end of the summer they had still missed meeting with groups in four places: Fort St. John, Sturgeon Lake, Upper Hay River, and Fort Resolution. The next summer, a second commission under James Macrae returned to the area to meet with people who had been missed and to pay annuities to Indians who had signed treaty the previous summer. In all, Laird's group brought 2,217 Indians into treaty and Macrae brought an additional 1,106 Indians into treaty, including people from two bands which the federal government had previously not known existed. In all, 3,323 Indians were brought into treaty by the Treaty 8 Commissioners in the summers of 1899 and 1900.³⁶ None of the treaty commissioners made any attempt to meet with the people who lived in the Lesser Slave interior. John Goddard, in his

³⁵ Daniel, p. 85

³⁶ "Treaty No. 8: Report of Commissioner for Treaty No. 8, Department of Indian Affairs, Ottawa, December 11, 1900"

book Last Stand of the Lubicon Cree, said that for a long time members of the bands which had been missed by the commissioners would come out of the bush almost every year to try to make contact with government representatives in an effort to sign a treaty with them.³⁷

In his report to the government dated December 11, 1900 Commissioner James Macrae estimated that 500 people had been left out of the treaty negotiations in 1899 and 1900. Macrae reported that "(t)here yet remains a number of persons living 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."³⁸ The story of these people, the people who lived in the interior north of Lesser Slave Lake and who were left out of Treaty 8, will be told in more depth in the second chapter of this thesis.

Another issue raised by the Treaty 8 negotiations is whether the First Nations who took part in the negotiations clearly understood what was being discussed and agreed to. Interpreters accompanied the treaty commissions, but the cultures of the two parties to the negotiations were very different, and it is debatable whether the treaties can really be said to represent any kind of mutual agreement on key issues like land surrender. Fumoleau quotes extensively in his book from oral histories that were done

³⁷ Goddard, p. 2

with people who were present at the Treaty 8 negotiations. One such interview raises serious concerns about how the treaty negotiations, in this case conducted by Commissioner Macrae at Fort Resolution in the summer of 1900, were conducted.

Finally, the agent showed up. . . The Agent walked up to meet us. He said "I'm pleased to see all this bunch. It is late in the season. I was afraid everyone had left for the bush. On the Queen's word I have come with money. I'm going to issue the money to all the Indians. I am pleased that lots of people are still here." . . The Agent said "Tomorrow, I am going to put up a tent. We will have a meeting before I give money. Everyone – old, young – has got to come and hear what is said." . . . In the morning, the Agent put up a tent. We had never seen a one-pole tent before. It was a great big one. Everyone went over to listen. When we got to the tent there was a table and chairs for the Agent and interpreter. We sat on the ground on one side. The Treaty Commissioner said, "We don't come to make trouble. We come for peace and to talk about money. . . From now on, there will be lots of White men. So if the White men come you will treat them just like your own brothers. And the White men, if they see a poor Indian in trouble, they will help, just like he was their own brother. That is why we came here. . . We are not looking for trouble. It will not change your life. We are just making peace between Whites and Indians – for them to treat each other well. And we do not want to change your hunting. If Whites should prospect, stake claims, that will not harm anyone. I have come here to issue this money, that is all."³⁹

Other elders present at the treaty negotiations gave accounts of the discussions that were very similar. Macrae's focus seemed to have been to hand out money in exchange for the signatures of the Indian leaders on a treaty document that does not appear to have been read or explained to the assembled people. Another elder said that, after some discussion, "they all

³⁸ "Treaty No. 8: Report of Commissioner for Treaty No. 8, Department of Indian Affairs, Ottawa, December 11, 1900"

³⁹ Fumoleau, pp. 95-96

agreed that the treaty was fine because it did not concern the land."⁴⁰ Oral accounts of the treaty negotiations by Indian people who were there would seem to support the contention of the Federation of Saskatchewan Indian Nations (FSIN) that Treaty 8 "did not constitute a land surrender but was only a treaty to establish a peaceful relationship between the Indians who signed it and the government."⁴¹

Treaty 8, as the first of the "northern" treaties, differed from the earlier "numbered" treaties in several important respects. First, there was a separate Metis Commission which traveled with the Treaty Commission and which was charged with the responsibility of negotiating land or scrip with the Metis inhabitants of the Treaty 8 area. The Metis Commission was headed by Major James Walker, a retired NWMP officer from Calgary, and included J.A. Cote, J.F. Prudhomme, and Charles Mair. Only once before, when a Scrip Commission accompanied a Treaty Commission which was negotiating an adhesion to Treaty 6 at Montreal Lake in 1889, had a separate commission tasked with settling Metis claims accompanied a treaty commission.⁴²

Statutory recognition of Metis rights had been acknowledged for the first time in the Manitoba Act of 1870 but only for Metis living in Manitoba.

⁴⁰ Fumoleau, p. 101

⁴¹ Noel Dyck, "The Negotiation of Indian Treaties and Land Rights in Saskatchewan," in Aborigines, Land and Land Rights, ed. Nicolas Peterson and Marcia Langton (Canberra: Australian Institute of Aboriginal Studies, 1983), p. 412

⁴² Madill, p. 22

Treaty negotiations with First Nations on the prairies in the 1870s had proceeded with no provision made for settlement of Metis claims until 1879.

The Dominion Lands Act of 1879 enabled land grants to be made to Metis in the then North-West Territories, but this statutory provision was not acted upon until early in 1885 when an Indian and Metis rebellion was anticipated. . . . The different methods adopted for dealing with Indians and Metis, which had first applied in Manitoba, were in this way extended into the north; two commissions were appointed to deal with Indians and the Metis respectively in the Treaty 8 area. The same principle was followed for Treaties Nos. 10 and 11, except that the Indian treaty negotiators then acted simultaneously as scrip commissioners for the Metis.⁴³

There were pragmatic reasons for the government's interest in negotiating with the Metis in the area covered by Treaty 8. The government was convinced that if they did not make some effort to address Metis claims that the Metis would use their influence to convince the Indians not to sign treaty. In a letter written in April 1898, Indian Commissioner A. E. Forget recommended that the government deal with the Metis "at an early date . . . as unless the Halfbreeds are treated with simultaneously with the Indians it may be confidently expected that the former will use their powerful influence over the latter to retard negotiations for the ceding of the territories. I may say that from what I have been able to learn the Northern native population is not any too well disposed to view favourably any proposition involving the cession of their rights to the country."⁴⁴

⁴³ Indian Claims in Canada: An Essay and Bibliography (Ottawa: Research Resource Centre, Indian Claims Commission, 1975), pp. 12-13

⁴⁴ RG 10, vol. 3848, File 75,236-1, microfilm reel C-10149

The Commissioners for Treaty 8 gave the Metis people they met with the choice of taking scrip or joining a band as Indians. If they chose the former option they were given a one-time certificate with a face value of \$240 or 240 acres of land. Commissioner Laird and the other commissioners counseled people against taking scrip, citing examples of unscrupulous scrip buyers in Manitoba who had cheated people by paying them far less than the face value of their scrip. Laird's warning proved accurate as two Winnipeg lawyers arrived in Lesser Slave Lake three weeks later to buy scrip for \$75 cash.⁴⁵

Another aspect of Treaty 8 which was different from earlier treaties is that Indian people were presented with three ways in which assistance could be provided to them to reflect the different circumstances in which people lived in the north compared to Indians on the prairies. Treaty 8 gave people the option of holding reserve land in severalty as well as reserve land in common. The decision to offer Indians the option of taking land in severalty was based on information that the government received from missionaries and the NWMP who reported that "there was some opposition to treaty by those Indians who resisted being restricted to reserve lands and who feared the loss of their hunting, fishing and trapping rights. Forget questioned the application of the reserve system in the north, as the area to be covered by Treaty Eight was unlike that of the previous

⁴⁵ Goddard, p. 10

'numbered' treaties, and the social organization of the northern Indian bands differed from that of the Plains Indians."⁴⁶ People like Forget believed that hunting, trapping, and fishing were carried out by individuals or family groupings and that the northern people were not as attached to the "communal idea" as the Indians of the plains. Those Indians who chose to receive reserve land in severalty would also receive land based on a square mile for every family of five. The third option which they offered people in the Treaty 8 area was to receive agricultural assistance for those who wished to farm.

A third respect in which Treaty 8 differed from earlier treaties is that people were given verbal assurances by the Commissioners that "the treaty would not lead to any forced interference with their mode of life, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service."⁴⁷ As mentioned earlier, these promises, like the guarantee that people would be free to pursue hunting, trapping, and fishing without government interference, were promises made by the government to ensure that the Indian people would sign the treaty because the Indian people were reluctant to sign treaty without gaining assurances from government representatives that their rights would be respected "as long as the sun shines and the water flows." In retrospect, it is clear that the Indian people involved in Treaty 8 had a very good sense of what the

⁴⁶ Madill, p. 30

⁴⁷ "Report of the Commissioners for Treaty No. 8," September 22, 1899

"development" of the north would mean to their traditional way of life and that they did what they could to get the best possible deal from the federal government. It is also clear that what they were promised is not accurately reflected in the written text of the treaty and that, despite what the commissioners told them, the government intended to open up the north for development regardless of the impact on the Indian people living in the area.

In conclusion, while the negotiation of Treaty 8 followed a similar pattern to the negotiation of the earlier "numbered" treaties on the prairies, as the first northern treaty Treaty 8 was also different from earlier treaties in a number of respects. It covered a vast territory, greater than any treaty before it, and territory that was difficult to access. Negotiating a treaty in an area this vast and inaccessible made it inevitable that some people would be left out, and there were significant numbers of people left out of Treaty 8. It is clear that government policy at the time was that negotiating with the people living in the area affected by prospecting activity (i.e. northern British Columbia, and the Peace River and the Athabaska River area of northern Alberta) was of paramount importance. This policy meant that people living outside that area, for example in northern Saskatchewan, could be left out of negotiations, even though they had been petitioning for a treaty since at least 1879. As well, the government felt that as long as they made an effort to meet with the majority of people in an area it was

appropriate to expect the other Indian people to take the initiative to ensure that they were included in treaty. Finally, the federal government was obsessed with keeping the cost of treaty negotiations to a minimum, so it was not concerned that people in the Lesser Slave Lake interior had been left out, for example, because they were considered to be living well, independent of any assistance from government, and for the sake of keeping expenditures down it was felt that they could be left out of treaty.

The legacy of Treaty 8 is one of broken promises for those included in the treaty and years of frustrating negotiations for those who were left out. For the people in the Lesser Slave Lake interior, who are still without a treaty, it has meant that they have had to carry on a struggle that has spanned more than a century to have their Aboriginal rights recognized by the Crown. The rest of this thesis will be devoted to telling stories of these people, the people left out of Treaty 8.

Chapter 2: The People Left Out of Treaty 8 in Northern Alberta

In the summer of 1900 Treaty 8 Commissioner James Macrae traveled into northern Alberta and to Fort St. John in British Columbia to continue the task of treating with Indian bands in the Treaty 8 area that had not been dealt with the previous summer. He also paid annuities to the Indians who had signed the treaty in 1899 and accepted applications for Metis scrip. Macrae signed adhesions with eight bands in 1900: "the Crees of Sturgeon lake; Beavers of Fort St. John; Slaves of Upper Hay River . . . ; and the Dogribs, Yellowknives, Chipewyans and Slaves of Lower Hay river. Some Caribooeaters, belonging to the country east of Smith's Landing on Great Slave river, also came into treaty, but they were incorporated with the Chipewyan band of Smith's Landing."¹

Macrae's report ends with a reference to a group of people in northern Alberta who he knew had been left out of treaty negotiations.

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 exclusive of those in the extreme northwestern portion but as most, if not all, of this number belong to bands that

¹ "Treaty No. 8: Report of Commissioner for Treaty No. 8," Department of Indian Affairs, Ottawa, December 11, 1900

have already joined in the treaty, the Indian title to the tract it covers may be fairly regarded as being extinguished.²

Who are these people who were left out of Treaty 8 negotiations in northern Alberta? The people of the Lesser Slave Lake interior are primarily Cree-speaking people who belong to different "regional bands".

There are several societies in that area which ethnologists call regional bands. A regional band is defined as people who see themselves as the same people as defined by familial relationships and shared territory. In the case of the people now referred to as Lubicons we have identified thirty nine separate communities – each with their own area within a larger shared territory and each with different Elders – who consider themselves to be the same people, the same regional band. These thirty nine communities include Cadotte Lake and Loon Lake but do not include Whitefish Lake to the south, Wabasca Demarais to the east or Little Red River to the north. . . The Cree speaking people in northern Alberta speak the same dialect although not the same dialect as the Cree speaking people on the prairies or Cree speaking people to the east.³

There is a prevailing myth that the Western Woods Cree are not indigenous to western Canada but are, in fact, the predecessors of the fur traders in western Canada. Dr. James Smith, a prominent social anthropologist and a former curator at the Museum of the American Indian in New York City, uncovered linguistic and anthropological evidence which indicates that the Cree have lived in western Canada since at least A.D. 1400. In his article entitled "The Western Woods Cree: Anthropological Myth and Historical Reality" Smith said

"Treaty No. 8: Report of Commissioner for Treaty No. 8", Department of Indian Affairs, Ottawa, December 11, 1900

Interview with Fred Lennarson, technical advisor to the Lubicon Lake Cree Band, August 14, 2003.

The weight of evidence now indicates that the Cree were as far west as the Peace River long before the advent of the European fur traders, and that post-contact social organization was not drastically affected by the onset of the fur trade. . .

The Western Woods Cree subsistence pattern, based upon the primacy of moose as *the* big game animal, was a basic pattern of significant antiquity and not an adaptation based upon a European technology. The strategy of moose hunting was based upon a simple technology and a social organization based upon small, generally patrilocal hunting groups linked by ties of bilateral cross-cousin marriage, then further linked into bilateral or regional bands.⁴

Commissioner Macrae estimated that 500 people living in the Lesser Slave Lake interior were left out of Treaty 8 negotiations, but genealogical research conducted by people in the area would indicate that the number was much greater. Research done jointly by the federal government and the Lubicon Cree Band in the 1980s, for example, indicates that at the time that the treaty was negotiated in 1899 and 1900, Lubicon society alone numbered between 2500 and 3000 people. The studies also show that the interior bands were separate from the river bands which signed the treaty.⁵ The influenza epidemic of 1918, however, had a devastating impact on the people of this area. Archival information and oral history indicates that up to 95% of the people in these northern communities were wiped out by the influenza epidemic of 1918.⁶

James G.E. Smith, "The Western Woods Cree: Anthropological Myth and Historical Reality", American Ethnologist, 14(3), August 1987, published by the American Anthropological Association.

John Goddard, Last Stand of the Lubicon Cree (Vancouver: Douglas & McIntyre Ltd., 1991), p. 12

⁶ Interview with Fred Lennarson, August 14, 2003

Government records indicate that some Indians who had been left out of treaty negotiations in 1899 and 1900 made application to receive scrip.

In a letter to Clifford Sifton, Minister of the Interior, on March 16, 1901

Scrip Commissioner J.A.J. McKenna wrote

The following claims were not recommended by Mr. Macrae because he considered that the claimants should be classed as Indians, and I have disallowed them. . . Claims 369 to 381 above referred to are classed by Mr. Macrae as Whitefish Lake Indians. They belong to a group who did not come in to take treaty in 1899 and they were not taken into treaty last year because it appears that their Chief and band as a whole did not come to make a formal adhesion. No more formal adhesions are necessary. These Indians and any others who have not already been put on the treaty lists should be taken in the ordinary way and paid arrears. Mr. Conroy has been so instructed. The same rule should apply to all who have been refused scrip because they are regarded as Indians.⁷

McKenna's letter lays out what became the federal government's method of handling requests to be included in treaty by people living in the Lesser Slave Lake interior. When Indians from that area came forward asking to be included in treaty, they were added to existing band lists, whether or not they belonged to that band or lived in that area. While the government sent Indian agents to sign adhesions with other bands who had been left out of treaty in 1899 and 1900, they were not prepared to sign an adhesion with the Whitefish Lake band or the Lubicon. "The government's political position on the Whitefish Lake people, as with the Lubicons, is that the Whitefish Lake people were

⁷ National Archives of Canada, RG 10, vol. 3999, File 206,070-31

treaty Indians all along, despite the fact that neither the Lubicons nor the people from Whitefish Lake had signed the treaty."⁸ In 1911 the federal government did give the Whitefish Lake Band a reserve, but not as much as they were entitled to under Treaty 8. It wasn't until 1986 that the Whitefish Lake Band finally signed a formal adhesion to Treaty 8 in exchange for more reserve land.⁹

The other interior groups left out of Treaty 8 were people living in isolated communities at places like Chipewyan Lake, Sandy Lake, Trout Lake, Long Lake, Peerless Lake, and Loon Lake. The closest that the treaty commissions of 1899 and 1900 came to the communities of Chipewyan Lake, Sandy Lake, Trout Lake, and Peerless Lake was Wabasca. Department of Indian Affairs annuity pay lists indicate that beginning in 1900 individuals from these communities made the long trip to Wabasca and were put on the Bigstone Band (Wabasca) pay lists. "Once on the lists, a person could then have someone else collect and deliver his money in the years when he did not make the trip himself"¹⁰. By the 1930s the majority of people living in these communities regarded themselves as Treaty Indians because their names appeared on the annuity pay lists of the Bigstone Band.

⁸ Transcript of interview with Fred Lennarson, August 14, 2003

⁹ Transcript of interview with Fred Lennarson, August 14, 2003

¹⁰ Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta," a document prepared by Treaty and Aboriginal Rights Research (T.A.R.R.) for the Isolated Communities Advisory Board and the Lubicon Lake Band, January 1975, p. 3

The people left out of Treaty 8 in northern Alberta, then, were Cree-speaking people who had lived in isolated communities north of Lesser Slave Lake for generations and who, at the time that Treaty 8 was negotiated, probably numbered at least 3000 people. They did not sign Treaty 8 in 1899 or 1900, they did not belong to the other bands that signed treaty, and their aboriginal title to the land was therefore not extinguished.

Early written accounts by white observers of the life of the people living in this area indicate that the people were able to make a living from traditional pursuits like hunting and trapping. C.D. White, the principal of an Anglican Church school at Whitefish Lake, made a trip through the area in the summer of 1909 and recorded his observations.

All the Indians in this district are engaged in trapping during the Winter, some occupy all their time, others a part of their time. (T)hose who own horses and sleighs, have the opportunity of doing some freighting, or other work with their teams, while they are not engaged in looking after their traps. In the spring most of them put in a small garden of potatoes and vegetables. . . The haying season is quite a busy time . . . they put up hay for their own stock and have the opportunity of making money by putting up hay for sale.¹¹

White was particularly impressed by the land near Lubicon Lake, sometimes referred to as Prairie Lake, and Buffalo Lake which he described as having "good spruce, rich black soil and open fields of hay"

¹¹ RG-10, volume 6380, file 769-1, microfilm reel C-8728

and "where people were living marginally better than Indians elsewhere."¹²

In 1909, David Laird's youngest son, Harold, was given a posting with the Lesser Slave Lake Agency. Together with the Indian Agent who was based at Grouard, Laird was responsible for paying annuities to treaty members all over northern Alberta. "A single circuit took up to six months; travel was variously by packhorse, sailboat, mission steamer and Peterborough canoe, often in appalling weather."¹³ Harold does not appear to have had the personality or the skills for the job. He developed a drinking problem and was very poor at keeping accurate records.

In the summer of 1911, Laird penetrated the Lesser Slave interior, the first federal agent to do so, and made note of a number of previously undocumented bands at Trout, Peerless, and Esquisetum lakes. The following year he encountered bands at Loon, Otter, Fish, and Lubicon Lakes. He mentioned these bands in his reports to Ottawa but was given no instructions for how to deal with them. Then, in 1916, the Indian Agent at Grouard quit and Laird was left alone as Acting Indian Agent.¹⁴

On April 5, 1922 Father Y. M. Floc'h, OMI wrote to Charles Stewart, Superintendent General of Indian Affairs, asking that Indian people living "in the bush, in the north of Grouard, around the lakes generally called

¹² RG-10, volume 6380, file 769-1, microfilm reel C-8728

¹³ Goddard, p. 14

¹⁴ Goddard, p. 14

Martle, Otter, Fish and Loon Lakes"¹⁵, be admitted to treaty that year when annuities were paid at Whitefish Lake. The Department of Indian Affairs in Ottawa responded to Rev. Floc'h by saying that "the Department does not appear to have any information with regard to the Indians to whom you refer living in the bush north of Grouard" despite the fact that Harold Laird had mentioned them in his reports. Laird was once again asked for a report. Harold Laird responded on May 9, 1922 saying

I have to report that Indians referred to by the Reverend Father Floc'h are located north of Whitefish Lake and Wabasca at Prairie Lake, Otter Lake, Fish Lake, Loon Lake and the small lake north of the Peerless (Trout) Lakes. I would estimate their number between 80 to 100. In my report on the Annuity Payments in 1911, I made mention of the Indians, not in Treaty, to the north of Trout Lakes and in 1912 I made report of the non-Treaty Indians north of Whitefish Lake. Both at Whitefish Lake and Wabasca a few of the above have been taken into Treaty each year since the above dates.¹⁶

There was agreement within the Department of Indian Affairs that these Indians from the Lesser Slave interior should be admitted to treaty but there was disagreement over how much to pay them. Duncan Campbell Scott, the head of Indian Affairs, recommended that they be paid the five dollar annuity plus the seven dollars that others were given when they signed the treaty, plus arrears back to 1899. The chief accountant, Frederick Paget, objected that this would create a costly precedent as other Indians admitted to treaty had not been allowed arrears. His suggestion that Harold Laird be instructed to pay each of

¹⁵ RG 10, vol. 7972, file 62-131 (Lesser Slave Lake Agency – Band Membership)

¹⁶ RG 10, vol. 7972, file 62-131 (Lesser Slave Lake Agency – Band Membership)

these Indians \$12 was approved. Laird still received no instructions on what to do with bands which had not been admitted into treaty.¹⁷ As Indians from the interior began to show up on reserves asking to be added to treaty, Laird added these people to existing band lists rather than creating new lists.

Over time, Laird's paylists became hopelessly muddled. Overworked and still drinking, he added new names to existing lists and let routine updates fall desperately behind. His records showed Spanish flu victims being paid years after their deaths, and at some point he went from pocketing the money out of incompetence to actively fiddling the accounts. In 1931, he was fired and convicted of forgery and fraud.¹⁸

Laird's successor as Indian Agent for the Lesser Slave Lake Agency was Napoleon L'Heureux. L'Heureux immediately set himself to the task of correcting the paylists but found it an almost impossible task. In 1933 he invited the inspector of Alberta Indian agencies to accompany him on his tour of treaty communities to revise and check paylists. But they didn't travel into the interior to clarify the issue of interior bands who had been left out of treaty. Instead they continued Laird's practice of adding people from the interior onto existing paylists at Whitefish Lake, Wabasca and other reserves.¹⁹

By 1932 the interior bands themselves had become interested in being taken into treaty.

¹⁷ Goddard, pp. 14-15

¹⁸ Goddard, p. 15

¹⁹ Goddard, p. 16

In the 1930s, during the Great Depression, information filtered back into this hinterland area that outsiders were going to be moving into the area and taking over the land. The Lubicon understanding of the treaty is that it protected Indian lands. That gave them reason to participate in treaty, at least as they understood what treaty was all about, so they started sending emissaries out to communities in the surrounding area, to places such as Whitefish Lake and Wabasca Demarais, to try to establish contact with these outsiders and make agreements to have their lands protected. Typically what happened with these emissaries was that they were simply put on the band list in the outlying area where they went to make contact, given a \$5 treaty annuity payment and roughly sent on their way . . .²⁰

On July 7, 1932 Napoleon L'Heureux wrote to the Secretary of the Department of Indian Affairs in Ottawa saying that "while at Whitefish Lake an Indian from Loon Lake requested that the Indians living at this lake be taken into Treaty. He told me that they have 125 men, women and children who have never been taken into treaty, and would like to join." L'Heureux asked the department to let him know what to do with this request.²¹ The department appears to have forwarded L'Heureux's letter to M. Christianson, Inspector of Indian Agencies for Alberta, who responded on September 23, 1932 by saying

I have just returned from the Peace River country and have not yet had time to start my report, but one of the subjects that will be discussed in my report is that if I possibly can, I shall accompany the Agent on the Treaty Trip next year to Wabasca, Whitefish Lake, Hudson's Hope, Moberly Lake, Fort Vermillion, Boyer River and Upper Hay River. . . I would suggest that arrangements be made to take these Indians into treaty, and that they be instructed to appear at Whitefish Lake during the next treaty payment.²²

²⁰ Interview with Fred Lennarson, August 14, 2003

²¹ RG 10, volume 7972, File 62-131, vol. 2

²² RG 10, volume 7972, File 62-131, vol. 2

The department wrote a letter to Christianson agreeing with his suggestion, but it appears that the promised trip did not take place. On August 25, 1933 the Indians at Prairie Lake (also known as Lubicon Lake) sent a letter and a petition signed by all of the heads of the families in the area asking for a reserve. The petitioners described themselves as "Treaty Indians" because their names had been added to band lists at Whitefish Lake and other locations.

We are over 40 miles from Whitefish lake by the present trail, which is also a very bad one, and we find it hard to attend the yearly Treaty payments there, in fact some have not been present at Treaty for several years.

None of the parties who signed this Petition, have homes or have lived on the reserve at Whitefish Lake, and none of us wish to do so.

The rations that are issued at Treaty time go to the Indians on the reserve, and we are neglected.²³

A copy of the letter and the petition were forwarded to L'Heureux who wrote to the Department of Indian Affairs on December 7, 1933 saying "formerly, Prairie Lake was the refuge of all the drunkers and lazy Indians of Whitefish Lake and other bands who did not like to be under close supervision, and I found out, after I took charge of this Agency, that all the Indians who were living there, either young or old, were on regular monthly rations . . ."²⁴ L'Heureux ended his letter by listing the names of

²³ RG 10, volume 7972, File 62-131, vol. 2

²⁴ DIAND, file 777/30-12

the people at Prairie Lake who had signed the petition, their "numbers" and the bands they "belonged to."

By 1935 there were a significant number of people living in the isolated communities in the Lesser Slave Lake interior who were pressing to have their bands recognized and reserves set aside for them. On July 6 L'Heureux wrote

Joseph Cardinal representing the Indians of Chipewyan Lake and Trout Lake requests the appointment of two councilors, one at each of these points. He states that these Indians are receiving none of the benefits that they would be entitled to under treaty. They have no councilor to represent them before the authorities; they never see the Indian Agent unless they travel the 75 miles to Wabasca and they never receive twine or ammunitions as other Indians do. He says there are more than 170 Indians at Trout Lake and over 200 at Chipewyan Lake. They are living under fair conditions he states; are not asking for any help that they would not be entitled to. Having no reserves of their own is also a drawback to most of them. He wishes that the Department would take cognizance of their situation and take the steps to rectify same.

Have sought information from the local Headmen of Wabasca who affirm that the Indians of Trout Lake and Chipewyan Lake do not belong to the Wabasca Bands from the Indian's point of view, that they have an identify of their own. The number of resident Indians at both points is sufficient to warrant the appointment of two Headmen and I would pray the Department to grant their application as a first step to bring about a gradual rectification of their standing as a band.²⁵

²⁵ Report of Indian Agent Napoleon L'Heureux, July 6, 1935, RG 10, vol. 7125, File 777/3-5 as quoted in "Land Rights of the Isolated Communities of Northern Alberta," a report prepared for the Isolated Communities Advisory Board and the Lubicon Lake Band by Richard Daniel in January 1975

Another report by L'Heureux dated July 8, 1935 included another petition from another group of Indians at Loon Lake requesting a reserve. No action appears to have been taken in response to the petition.

Then, in L'Heureux's report for June, July and August of 1938, he says that

Alexis Laboucan, No. 81, a Treaty Indian of Whitefish Lake Band but residing at Prairie Lake makes application on behalf of himself and other Indians of the same Band who reside at Prairie Lake, for the grant of an Indian Reserve at that point. As he could give little indication on the nature of the land, the location of the reserve, etc. I have advised him of the necessity of supplying information but that however I would make it a point to submit their desire to the department.²⁶

Again, there is no indication that L'Heureux or the Department of Indian Affairs took any action in response to these petitions.

Since no government agent since Laird had penetrated the Lesser Slave interior, people like L'Heureux had no first hand information on the people living in that area. Also, since they were convinced that all of these people were already treaty Indians who were receiving rations, they did not feel compelled to investigate further.

This situation finally changed in 1939 when L'Heureux and the federal inspector for Alberta agencies, Pant Schmidt, hired a plane and flew into Lubicon Lake to meet with the people. They were the first government representatives to do so. L'Heureux's report on his meetings with the

²⁶ DIAND, file 777/30-12

people at Lubicon Lake was glowing, contradicting his earlier claims that these people were "drunkers" and lazy.

Lubicon Lake, called locally Prairie Lake, lies about 26 miles N.E. of Whitefish Lake and is the site of an Indian Camp inhabited the year round by some 126 Indians who belong for the majority to the Cree Band of Whitefish Lake; they disclaim this however and say that they have no connection with that Band, stated they never had any at any time except for the sending of two or three of their men each year at treaty time to collect their annuity which otherwise they would not have received as the treaty party never called there. They wish

1. Their establishment as a Band of their own to be recognized by the Department;
2. The selection of an Indian Reserve for themselves and their families;
3. The extension to them of the same privileges and assistance as given to Indians established on Indian Reserves.

As it was the first time that a treaty party was afforded the opportunity to visit these Indians in their own district, particular pain was taken to scrutinize their claim. It was well noticeable from the outset that these Indians are far different from those of Whitefish Lake. They are gay, look bright and seem active, qualities that are conspicuously absent in the others.

L'Heureux's letter is critical to understanding the history of the Lubicon Lake Cree Band's long struggle for recognition of its aboriginal claim to the land it has occupied for many generations. First, it confirms the Lubicon Lake Band members' own account of their history and the basis for their claim that their aboriginal title to the land has never been extinguished. But as well, some of the things that L'Heureux said have been misinterpreted and used against the Lubicon in support of the federal government's claim that the Lubicon Lake Cree Band were members of the Whitefish Lake Band who "broke away" in 1939 or 1940. The specific

words that L'Heureux used which the government has chosen to misinterpret are:

I would recommend that the Indians of Lubicon Lake be *detached from the Cree Band of Whitefish* to form the Cree Band of Lubicon Lake.

I would also recommend the selection of a Reserve for this new Band. . . In this matter of the request for a Reserve I would be pleased if the Department would consider it an early date, even as early as to make possible the surveying of the area this fall. (italics added)²⁷

L'Heureux suggested that the Lubicon Lake Cree Band be "detached" from the Whitefish Lake Cree Band not because he believed that they had always been part of the same band but because he recognized that his department had added members of the Lubicon Lake Band to the band list of the Whitefish Lake Band, in error, for many years. Nevertheless, L'Heureux's report and a subsequent letter written in November 1940 have been used for decades, beginning in the 1950s, to support the federal government's efforts to de-legitimize the Lubicon Lake Cree Band's position that they never belonged to the Whitefish Lake Band and have never signed Treaty 8.

On August 15, 1939 L'Heureux forwarded a copy of his report along with a letter from Bishop Langlois supporting the petition of the Lubicon Lake band for a reserve to C.P. Schmidt, Inspector of Indian Agencies, based in Calgary, asking him to forward these documents to the

²⁷ DIAND file 777/30-12

Department of Indian Affairs with his own comments and recommendations. Schmidt submitted his own report to the Department dated August 16, 1939 confirming many of L'Heureux's observations and also recommending that the Lubicon Lake band be given a reserve.

I was very much interested in this band, and found them clean, well dressed, healthy, bright and intelligent; in other words, people who want to live and do well. . .

I would ask that the matter of giving these Indians a reserve between Lubicon and Buffalo Lakes be considered, and if approved, that the land mentioned by them be looked over carefully this Autumn, and that the question of including Buffalo Lake within the limits of this reserve be given careful consideration.²⁸

Schmidt counted 127 band members and recommended a reserve of 25.4 square miles based on the terms of Treaty 8. Ottawa gave tacit approval to the recommendation and authorized L'Heureux to oversee an election for chief at Lubicon Lake. On June 4, 1940 Joe Laboucan was elected the first chief of the Lubicon Lake Cree Band.²⁹

In the fall of 1940 a survey team flew into northern Alberta. The original plan was to survey reserve boundaries for three bands in the Lesser Slave interior at Peerless Lake, Chipewyan Lake, and Lubicon Lake and for six groups in the northwestern part of the province.³⁰ At the last minute, however, the orders were changed and the surveys at Peerless and Chipewyan were cancelled. The surveyors tried to fly into Lubicon Lake but weren't able to land because of a forest fire. From the air, the

²⁸ DIAND file 777/30-12

²⁹ Goddard, p. 20

³⁰ Goddard, p. 20

federal surveyor, C.B.C. Donnelly, sketched out the boundaries for a reserve of approximately 25 square miles on a map for the Lubicon Lake band. In all, the surveyors "selected seven parcels of land at Hay Lakes and vicinity and one at Lubicon Lake for the Indian Affairs Branch."³¹ In a letter addressed to N.E. Tanner, the Alberta Minister of Lands and Mines, dated February 11, 1942 the Director of the federal Indian Affairs Branch, Harold McGill, asked that the Alberta government set aside these eight parcels of land for reserves under the provisions of Treaty 8. A description of each of the parcels of land was included with the letter. The federal government promised to have the proposed reserves surveyed as soon as the provincial government had advised that the land had been "temporarily reserved . . . from sale or settlement."³²

But before somebody could return to drive stakes into the ground, the first obstacle arose in what was to be a long, bureaucratic ordeal for the inhabitants of the Lesser Slave interior. Over the next several months, Ottawa officials exchanged contradictory memos on whether any surveys should go ahead. The surveyor general was in favour. The Indian Affairs director was pushing hard to have them finished "in order to definitely secure the reserves to which the Indians in this district are entitled." Ministerial approval for \$6,000 even came through to cover costs. But people at Reserves and Trusts were stalling. There was a war on, they said. The money might be needed elsewhere. Surveyors, they said, were in short supply.³³

One of the men behind the resistance to survey new reserves was Malcolm McCrimmon, an accountant with the Department of Reserves and

³¹ DIAND file 775/30-1, vol. 2

³² DIAND file 775/30-1, vol. 1

³³ Goddard, p. 20

Trusts who made it his mission over the next twenty years to cut as many Indian people as possible from band lists and thus reduce the cost to the government of paying annuities to treaty Indians. Soon after he came to Reserves and Trusts he set about trying to straighten out treaty annuity records, and came across the paylists of Harold Laird. He knew that Laird had been jailed for fraudulently adding names to paylists long after Treaty 8 had been signed, saw that L'Heureux was still adding names, and decided to investigate further. In his report on his first visit to the Lesser Slave Lake Agency in the summer of 1942 dated July 14, McCrimmon said

As you are aware the reason for my visit to the Lesser Slave Lake Agency was to check the Annuity paylists and membership rolls. Making the check I found that 576 non-Indians were included in the different bands . . . In each case I explained to the persons concerned why they could not be allowed to continue on the membership roll.³⁴

While the Treaty 8 Commissioners had given people a choice of choosing scrip as Metis or taking treaty as Indians, McCrimmon applied his own definitions and cut people from band membership with no right of appeal and, in most cases, no opportunity for discussion. For example, on June 3, 1942 McCrimmon and L'Heureux flew into Whitefish Lake to pay annuities and then on to Lubicon Lake. "No speeches, we are pressed to leave," McCrimmon announced briskly to those gathering around. . . . McCrimmon paid annuities to only twelve of the thirty-seven families listed with the band, telling the rest that they were no longer Indians, including

³⁴ RG 10, vol. 8062, file 777/28-3, part 5

everybody who had registered with L'Heureux. Altogether, McCrimmon deleted 75 names from a list of 154.³⁵

McCrimmon spent the rest of the summer deleting people from band lists in other communities in northern Alberta. He made up rules as he went along. He returned the next summer and cut more people from band lists. In all, during the summers of 1942 and 1943, McCrimmon removed more than 700 people from band lists in northern Alberta.

Goddard's account of McCrimmon's tours of northern Alberta is powerful.

Not a flicker of compassion seems to have informed McCrimmon's judgment as he made the rounds. He expelled the old and the lame, and split families. He expelled Thomas Bone, an eighty-year-old Whitefish Lake man with severe rheumatism, because Bone couldn't prove pure Indian blood on his father's side. Half the Henry Prince family were forced from the Sucker Creek reserve near Grouard; although the father proved Indian status, four of his children from his wife's first marriage could not. A young woman and her children had to leave the Brownvale reserve west of Peace River because her husband could not prove treaty status; he was overseas fighting in the war.³⁶

When he returned to Ottawa, McCrimmon wrote to the head of Reserves and Trusts regarding the proposed reserve for the Lubicon: "This request should be held in abeyance until the membership problem is settled. If my recommendation is approved by the Minister, the number of Indians remaining on the membership list at Lubicon Lake would hardly warrant the establishment of a Reserve at this point."³⁷ This became another of the arguments that the federal government used for years to

³⁵ Goddard, p. 23

³⁶ Goddard, p. 24

³⁷ DIAND file 777/28-3, vol. 6

deny the Lubicon people a reserve - that there were too few members of the Lubicon Lake band to warrant giving them a reserve.

The removals angered people in northern Alberta, and two public inquiries were held into the actions of Malcolm McCrimmon. The first inquiry was conducted by Mr. Justice C.M. McKeen, who accompanied McCrimmon as he visited the bands within the Lesser Slave Lake Agency and heard appeals. McCrimmon had determined the Judge's mandate, which limited him to asking only two questions, "Are you or your father Half-breed?" and "Did you or he take Scrip?" If the answer to either question was "yes," McKeen was not allowed to reinstate the person. The Judge soon realized that he was being used by McCrimmon. He wrote to the Minister, Thomas Crerar, objecting to the limited mandate of his review and to the injustices which had been done to people in northern Alberta. "He argued that because anyone living an Indian life was eligible for treaty in 1899, their descendants should likewise be eligible."³⁸ The Minister, however, stood behind McCrimmon and the removals were allowed to stand.

Two Alberta Liberal MPs then wrote to Justice Minister Louis St. Laurent, and in 1944 St. Laurent ordered a second inquiry headed by Mr. Justice W.A. Macdonald of the Supreme Court of Alberta.³⁹ Macdonald was able to review the cases of 500 of the 700 people who had been

³⁸ Goddard, p. 27

³⁹ Goddard, pp. 27-28

removed from band lists. "(H)e recommended reinstatement of almost eight of every nine cases he heard."⁴⁰ His report, instead of going to Justice Minister St. Laurent, who had initiated the inquiry, went instead to Minister Crerar, who put Malcolm McCrimmon in charge of implementing the report's recommendations. "McCrimmon reinstated only 120 people, meaning that in the end he stripped nearly 600 people in northern Alberta of Indian status."⁴¹ The removals carried out by McCrimmon in the 1940s are still an issue in determining membership in the Lubicon Lake Cree Band as the federal government wants to use its official lists, which reflect McCrimmon's removals, while the band wants to be able to include the people who have historically been part of their communities.

By the mid 1940s, there was increasing pressure on the Alberta government to release the land held for Indian reserves, and the Alberta government asked the federal government to clarify the status of promised reserves in northern Alberta. On April 6, 1946 the federal government wrote to N.E. Tanner, Minister of Lands and Mines for the Alberta Government, asking that seven of the original eight parcels of land be set aside for Indian reserves under the provision of Treaty 8. Again, the promise was made that the federal government would ensure that proper surveys of the proposed reserve sites would be done that year. "During the war it was not possible to secure the services of an Alberta

⁴⁰ Goddard, p. 28

⁴¹ Goddard, p. 29

surveyor" wrote Mr. J. Allison Glen, Federal Minister of Mines and Resources. "However, one is now available and the Surveyor General is communicating with your Director of Surveys with a view to having the land above referred to surveyed this year."⁴² On May 4, 1946 Tanner responded to Glen's letter asking why the proposed reserve for the Lubicon Lake Band had not been included in the federal minister's letter. Tanner said "I wish to confirm that the survey of this area at Lubicon Lake may be made at your convenience in accordance with the Transfer Agreement."⁴³

Over the next few years the Alberta government continued to ask the federal government to clarify its plans with respect to the land that had been set aside as a reserve for the Lubicon and the Lubicon continued to petition the government for a reserve. Correspondence went back and forth between federal government officials for years which indicates an increasing unwillingness to give the Lubicon the reserve land at Lubicon Lake that they had been promised. The federal government's objections to the site at Lubicon Lake seem to have been that it was remote and would be difficult for the government to administer, that the land was unsuitable for agriculture, and that it was on land where oil exploration was taking place. The government wanted the Lubicon to agree to move and take over the William McKenzie Reserve which had been surrendered

⁴² DIAND file 775/30-1, Claims and Historical Research Centre, INAC, Gatineau, Quebec

⁴³ DIAND file 775/30-1, Claims and Historical Research Centre, INAC, Gatineau, Quebec

by the Duncan's Band. A letter from G.H. Gooderman, Regional Supervisor of Indian Agencies in Calgary, to the Acting Superintendent of Reserves and Trusts in Ottawa dated November 28, 1952 clearly lays out the federal government's position:

The William McKenzie Reserve . . . totals 961.3 acres and if twelve or fourteen more adjoining sections could be secured from the Province instead of the twenty-four sections at Lubicon, *the whole would make an ideal reserve for a small group such as the Lubicon Band of fifty-two persons. The twenty-four sections at Lubicon Lake for this group is of little or no value and in one of the most inaccessible locations. It can only be reached by plane during the greater part of the year.* The Indians have never established themselves at this point though two or three old shacks were erected. They trap over a large area to the north and west and during a greater part of the year find employment with farmers and others in the district between Reno and Peace River.

It is next to impossible to make a living on the land set aside for a reserve at Lubicon Lake because the land is not fit for farming, there is little or no commercial timber and fishing is poor in the lake. . .

It is our opinion that any that wish to remain and settle down would be only too glad to have their homes on the William McKenzie Reserve. . . *Oil companies have been pressing for permission to explore the twenty-four sections held as a prospective reserve at Lubicon Lake and if this reserve is retained the Band would have the mineral rights.* (italics added)⁴⁴

On June 17, 1953 G.S. Lapp, the Superintendent of the Lesser Slave Lake Indian Agency wrote to Gooderman stating that, following payment of annuities to the Lubicon Lake Band at Three Creeks on June 4, he had asked band members whether they wanted to live on the William Lake Reserve and they had all said no, that they wanted to have a reserve at

⁴⁴ DIAND, file 777/30-23, Vol. 1 (Letter from G.H. Gooderham to Acting Superintendent, Reserves and Trusts, November 28, 1952)

Lubicon Lake.⁴⁵ One would think that this should have settled the issue but it did not and the correspondence continued. Finally, in October 1953, the Alberta government gave the federal government a way out of its dilemma by giving the latter thirty days to confirm its intention to establish a reserve at Lubicon Lake and other proposed sites. If a reply was not received within that time the Alberta government declared that it would assume that the federal government was not going ahead with the proposed reserves.⁴⁶ Ottawa did not reply within the specified time and the Alberta government removed any reference to the proposed reserves from its records.

Prior to 1956 it would appear that the federal government accepted the right of the Lubicon Lake Cree Band to a reserve even though they weren't prepared to agree to situate the reserve at Lubicon Lake. The Province of Alberta also seems to have been willing to provide reserve lands for the Lubicon under the terms of the Alberta Natural Resources Act. By 1956, however, the federal government's position seems to have changed. Officials from Indian Affairs began to express the view that the Lubicon Lake Band was not entitled to a separate allotment of land because they had been included in the allotment of land to the Whitefish

DIAND File 777/30-23, Vol. 1 (Letter from G.S. Lapp to G.H. Gooderham, June 17, 1953)

DIAND file 777/30-23, Vol. 1 (Letter from T. W. Dalkin, Director Technical Division, Alberta Department of Lands and Forests, to G. H. Gooderham, October 22, 1953)

Lake Band in 1910 and 1915.⁴⁷ In a letter dated October 11, 1956 from W.C. Bethune, Superintendent of Reserves and Trusts, to Joseph L'Hirondelle of Peace River, Alberta, Bethune actually went so far as to state that "no definite commitments" had ever been made to establish a reserve for the Lubicon Lake Cree Band.

Some years ago consideration was given to the possible establishment of a Reserve in or around Lubicon Lake and more than one inspection of suggested areas was carried out by responsible officials of the Branch. *The group of Indians for whom the Reserve was intended belong to the Whitefish Lake Band, for which Reserves have already been established.* This fact, coupled with a report that the Indians who frequent Lubicon Lake are in the minority, that they are only in the area a small portion of the year, spending the remainder of the time on their trap lines and that detailed examinations of soil maps showed that of the area tentatively selected only a small portion was suitable for agriculture, indicated that the establishment of a Reserve at Lubicon Lake would not be in the best interests of the Indians concerned. In addition, the area is not readily accessible which would make normal administration of the Reserve and the Indians a difficult and costly task.

*No definite commitments have been made with regard to establishing a Reserve for the Indians referred to in your letter and this problem is being reviewed by our Regional Supervisor of Indian Agencies in Edmonton. (italics added)*⁴⁸

Richard Daniel, writing in 1975, directly addressed this claim that the Lubicon were part of the Whitefish Lake band and that reserve land for them had been included when reserve land was set aside for the Indians

⁴⁷ "Land Rights of the Isolated Communities of Northern Alberta," a report prepared for the Isolated Communities Advisory Board and the Lubicon Lake Band by Richard Daniel, January 1975, p. 20

⁴⁸ DIAND file 777/30-23

at Whitefish Lake. Daniel provides evidence that the government's claim was not valid.

The three Whitefish Lake Reserves, #155, #155A and #155B, allotted in 1910 and 1915, totaled 11,973 acres. However, the population of the band at that time (116) should have entitled them to 14,848 acres. But what is more important is the fact that most, if not all, of the Lubicon Lake people were added to the band lists after 1915 and could not have been included in the population figures used to calculate the Whitefish Lake land entitlement.⁴⁹

The federal government also created a story that the Lubicon Lake Band "broke away" from the Whitefish Lake Band in 1940. The federal government uses as its source for this story the letter from N.P.

L'Heureux, Indian Agent for the Lesser Slave Lake Agency, written on November 8, 1940, which states "I wish to advise that it has been deemed necessary to make a division of the Whitefish Lake Cree Band, to establish the Lubicon Lake Cree Band, which Band is now receiving her allotment of Reserve land and is now also having her status as a Band recognized by the Department by the installation of a Chief under authority 32-131 dated March 21, 1940."⁵⁰ Based on what we already know, it is clear that L'Heureux is referring in this letter to the reserve that he promised the Lubicon in 1939 and also to the fact that members of the Lubicon Lake Band had been added to the Whitefish Lake band list mistakenly for many years. But that is not the interpretation that the government later chose to put on this letter. On September 24, 1965 the

⁴⁹ Daniel, p. 20

⁵⁰ DIAND file 777/30-23 (Letter from N.P. L'Heureux to the Secretary, Indian Affairs Branch, Ottawa, November 8, 1940)

Regional Director for Indian Affairs, R.D. Ragan, wrote to the Superintendent of the Lesser Slave Lake Indian Agency regarding a proposed Indian Reserve for the Lubicon and said

Following is an extract from a letter dated September 2, 1959 from Mr. Battle to Ottawa with respect to land for the Whitefish Lake Band and more particularly the Indians who reside at Lubicon Lake:

"(The) Lubicon Lake Band is a segment of the Whitefish Lake Band. Due to internal band disagreements, this group broke away from their parent body (Whitefish Lake Band) settling at Lubicon Lake. About the year 1940 they became separately identified as the Lubicon Lake Band. It seems that it was pre-supposed that with the election of a chief and council, that additional land credits might be allotted to this group. Approximately 20 sections of land in the area were tentatively held in reserve for them by the Province. After considerable investigation, it was generally agreed that the establishment of a Reserve in the area selected was not to be recommended – (1) because land credits for them were already included in the lands allotted to Whitefish Lake Band, (2) because the 20 sections held for a new proposed Reserve were, in any case, unproductive and generally unsuited. A suggestion was made that perhaps a portion of the lands allotted to Whitefish Lake Band might be exchanged with the Province for other lands suited to the needs of the group identified as the Lubicon Lake Band, but no progress appears to have been made and may not be necessary, *as there appears to be a definite trend that this group are re-joining the original group at Whitefish Lake.* (italics added)⁵¹

There are no historical records to support the suggestion that the Lubicon Lake Band was ever part of the Whitefish Lake Band, that it broke away from the Whitefish Lake Band in 1939 or 1940 or that it intended to re-join the Whitefish Lake Band. This story appears to have been created by the federal government and repeated in federal government records since 1956.

⁵¹DIAND file 777/30-23 (Letter from R.D. Ragan, Regional Director of Indian Affairs, to the Superintendent of the Lesser Slave Lake Indian Agency, September 24, 1965)

No progress was made by the isolated communities in getting the federal and provincial governments to recognize their outstanding land claims until, in the early 1970s, the isolated communities of the Lesser Slave Lake interior formed the Isolated Communities Advisory Board to jointly press for land and treaty rights. The Lubicon joined the Isolated Communities Advisory Board soon after its formation. Harold Cardinal and the Indian Association of Alberta, convinced that an oil development boom that was about to hit northern Alberta could and should provide lasting benefits for the Indian people who occupied the land, offered their assistance to the Isolated Communities Advisory Board in negotiating with the federal and provincial governments. In 1973, the Lubicon Lake Cree Band and the Peerless Lake Band passed resolutions giving Harold Cardinal and the Indian Association of Alberta authority to negotiate on their behalf with the federal government for land.⁵²

Cardinal and the Isolated Communities Advisory Board looked at various options for negotiating a land claims agreement for the isolated communities including court action, which they agreed would be very costly. Cardinal and the National Indian Brotherhood had been successful in getting the Trudeau government to withdraw its controversial "White Paper" in June 1970, and Cardinal felt that there was a good chance that

⁵² Band Council Resolutions addressed to the Indian Association of Alberta and signed by Walter Whitehead, Chief of the Lubicon Band on June 21, 1973 and by members of the Peerless Lake Band on February 10, 1975, DIAND files, Claims and Historical Research Centre, Gatineau, P.Q.

he could get this government to address the outstanding land claims of the isolated communities in northern Alberta. They began meeting with the federal government in 1974 and clearly believed that the government was sincere in wanting to negotiate a settlement.

In 1974, Cardinal advised the Indian Affairs minister, Jean Chretien, that the Indian Association would sponsor an aboriginal-rights case on behalf of the isolated communities north of Lesser Slave Lake, with a view to negotiating a land agreement with Ottawa. "Certain of the Indian people in Alberta have a claim to that area of land now known as the Athabasca Tar Sands", he advised the minister.⁵³

At a meeting with Indian Affairs Minister Jean Chretien in 1974, the department offered the assistance of Mr. Taylor Vergette from the department to work with Robert Young, lawyer for the Indian Association of Alberta, "in formulating a methodology and budgets" for the purpose of addressing the land claim of the isolated communities.

The offer of assistance was, however, short-lived. Early in January 1975, at a meeting in Ottawa, Robert Young was told by staff with the Department of Indian Affairs that, because of the political implications, it had been decided that the federal government could not second Vergette to work with the Indian Association of Alberta because the federal government was concerned that this might "be construed by the Provincial

⁵³ Goddard, pp. 47-48

Government as a political attack on the natural resources of the Province of Alberta."⁵⁴

In response, Robert Young wrote to Peter Lesaux, Assistant Deputy Minister for the Department of Indian and Northern Affairs in Ottawa, on January 24, 1975 and enclosed a detailed project outline titled "Treaty 8 Specific Land Entitlements". The project proposal laid out the basic facts of the land claim of the isolated communities as well as a budget for the work that the Indian Association of Alberta felt that it would have to do to negotiate the claim on behalf of the Isolated Communities Advisory Board. The budget request was for a total of \$181,480.

Also in January 1975, Richard Daniel, Research Director for the Indian Association of Alberta, published the paper "Land Rights of the Isolated Communities of Northern Alberta." The paper contains important information regarding the bands which were represented by the Isolated Communities Advisory Board, information which contradicts the position that has been taken by the federal government in negotiations with these groups since the 1970s. Daniels confirms that none of the Treaty 8 commissioners visited these communities in 1899 and 1900 to negotiate a treaty, and that Indian people had been living in the communities of Trout Lake, Peerless Lake, Chipewyan Lake, Sandy Lake, Loon Lake, and

⁵⁴ Letter of Robert Young to Peter Lesaux, Assistant Deputy Minister for the Department of Indian Affairs, January 24, 1975. Document obtained from the personal collection of Fred Lennarson.

Lubicon (Prairie) Lake for as long as people could remember (see Appendix I).

On July 21, 1975 Brian Pratt from the Office of the Commissioner of Indian Claims wrote to Jacques Roy, the federal government's legal advisor on Indian Affairs, confirming that the Office had decided to hold a hearing on August 21, 1975 in Slave Lake, Alberta for the purpose of taking evidence from elders living in the communities of Chipewyan and Peerless Lakes regarding their land claim. Two elders from Chipewyan Lake and two elders from Peerless-Trout Lakes were invited to give evidence. Dr. Lloyd Barber, Indian Claims Commissioner, heard evidence from elders in Slave Lake on August 21, 1975 which substantiated the claim of the isolated claim that "there were in existence identifiable groups and Bands of Indians who exercised dominant control over their traditional lands and that representatives of these Bands and groups did not take part in the Treaty making process."⁵⁵

At the same time that Cardinal and the Isolated Communities Advisory Board were pursuing negotiations with the federal government, they were also trying to get the provincial government to halt exploration and development on their land until a land claims agreement had been reached. But as soon as Cardinal and the Isolated Communities Advisory Board indicated that they intended to link outstanding land claims in

⁵⁵ Letter from Robert Young to Jacques Roy, June 1, 1976

northern Alberta with oil and gas development the provincial government's attitude turned hostile. Peter Lougheed had swept to power as Alberta's Conservative premier in 1971, and, in 1973, when world oil prices quadrupled Lougheed's government and the federal government became locked in a nasty dispute over oil and gas resources, with Trudeau arguing that Alberta's resource riches should be shared with the rest of the country and Lougheed insisting that Albertans should benefit most from the sale of their own resources. Lougheed "lumped native people with the federal camp" and "viewed the assertion of Indian land rights in the lesser Slave interior as a kind of Trojan horse."⁵⁶

Moving forward on their own, Cardinal and the Isolated Communities Advisory Board decided to file a caveat under the Alberta Land Titles Act with the Provincial Registrar of the Northern Alberta Land Registration District, giving all parties notice of an aboriginal claim to 25,000 square miles of land in northern Alberta. The caveat application was filed on October 27, 1975. On December 15, 1975 the Provincial Registrar referred the caveat request to the Alberta Supreme Court for a ruling on whether a caveat could be filed on unpatented Crown land.

On January 23, 1976 Robert Young, lawyer for the IAA wrote to William Beaver, the President of the Isolated Communities Advisory Board, advising him that there would be hearings organized in the isolated

⁵⁶ Goddard, pp. 48-49

communities to discuss the caveat and also that "the Federal Government has agreed to set up a negotiating committee to deal with the question of the Isolated Communities' unfulfilled land entitlement and have promised to have on the committee a government representative with the necessary authority to conduct the negotiations". It says further, "(i)t is not our intention to wait until the caveat case has been heard before proceeding with negotiations and I [Young] would ask that you [Beaver] advise me as to the representatives you wish to name to a negotiating committee. . . ."⁵⁷ A preliminary meeting was held in January 1976 with Indian Affairs Minister Judd Buchanan at which three demands were made on behalf of the Isolated Communities. The first was that the outstanding land entitlement be resolved, the second was that the people would share in the royalties from any development taking place on the land that they had traditionally occupied and the third was that royalty money would be used for the economic development and training of the Indian people living in the area.

Until August of 1976, the IAA and the Isolated Communities Advisory Board assumed that the federal government would assist them in pursuing their aboriginal claim to lands in northern Alberta. A telex from Harold Cardinal, President of the Indian Association of Alberta, to Prime

⁵⁷ Letter from IAA lawyer Robert Young to William Beaver, President of the Isolated Communities Advisory Board, January 23, 1976. Document obtained from the personal collection of Fred Lennarson.

Minister Trudeau on August 24, 1976 indicates that that assumption was wrong. The telex said, in part,

Yesterday morning our solicitor, Mr. Young, attended a pre-trial conference in the offices of Mr. Justice Lieberman. Mr. Young was amazed to find that two representatives of the Department of Justice, Messrs. Whitehall and Barrington, were in attendance. He was more concerned when he was informed that they anticipated receiving instructions from Ottawa to apply to intervene in the case and *support the position of the Province of Alberta that the caveat ought not to be filed. . .* (italics added).

This situation cannot continue.

It is imperative that we have your immediate and favourable response to our request for funding of the Native Caveat Case. As well, your government must instruct the Department of Justice that it is either to intervene in the case in support of the position of the caveators or not at all.⁵⁸

On September 7, 1976 a hearing was held on the caveat case in response to an application by the Provincial Attorney General to postpone the case until a decision had been made on a similar case in the North-West Territories, the Paulette Case. Judge S.S. Lieberman decided to grant the province's application "from the point of view in which the court is placed and which a decision from this court rendered prior to the decision in the Supreme Court of Canada. . ."⁵⁹

The Paulette decision was rendered in December 1976 and found against the Indians based on the fact that the laws of the NWT did not

⁵⁸ Telex from Harold Cardinal, President of the Indian Association of Alberta, to Prime Minister Pierre Trudeau, August 24, 1976. Document obtained from the personal collection of Fred Lennarson

⁵⁹ Copy of the Proceedings before the Honourable Mr. Justice S.S. Lieberman, at the Law Courts, in the City of Edmonton, Province of Alberta, on the 7th day of September, A.D. 1976, and taken in short-hand by N.L. Stewart, Official Court Reporter

allow for the filing of caveats against unpatented Crown Land as they did in Alberta.⁶⁰

On January 24, 1977 D. Bouey, a junior partner of IAA lawyer Robert Young, wrote to the Assistant Director of Treaty and Aboriginal Research for the IAA, Richard Lightning, in which he told Lightning that a court date had been set for the hearing of the caveat, March 28, 1977. This was sooner than the IAA had anticipated, and it meant that there would no longer be time for the IAA to gather the evidence of the Indian elders in the Isolated Communities prior to the beginning of the court case. The lawyers working on the caveat case for the Indian Association of Alberta clearly felt that the judge's ruling in the Paulette case, while it had gone against the Indians of the Northwest Territories, gave a strong indication that a caveat application would be successful under Alberta law.

Then, just days prior to the hearing of the caveat case, Alberta Attorney General Jim Foster informed the press that the Alberta government was considering the introduction of retroactive legislation which would "plug the loophole" in the Alberta Land Titles Act which allow the caveat application to be accepted! Bill 29, an Act to amend the Alberta Land Titles Act, was introduced in the Alberta legislature on March 25, 1977, only three days before the case would have been heard. As a

⁶⁰ The wording of the Paulette decision was as follows: . . . in the absence of any such provision in the federal Act as there was in the original Alberta Act of 1906 and as there is in the present Alberta Act . . . for the filing of a caveat against unpatented Crown land, the contentions of the appellants on the matters in issue are untenable.

result, the hearing of the caveat case was postponed indefinitely. After stormy debates in the Alberta legislature and despite public protests by organizations like the Canadian Civil Liberties Association, the Canadian Labour Congress, the Alberta Human Rights and Civil Liberties Association, the United Church of Canada and the Isolated Communities Advisory Board Bill 29 was passed in the Alberta legislature. Shortly after, the government announced that it was cutting back its funding support for the Isolated Communities Advisory Board, forcing the board to lay off staff and to cut back on meetings. The board collapsed soon after, bringing to an end the last attempt of the isolated communities to work together to get the federal and provincial governments to respect their aboriginal claim to the land in the Lesser Slave interior.

In 1978 and 1979, the Alberta government moved ahead with construction of an all-weather road into the Lesser Slave interior, a road which allowed full scale development of oil, gas, and timber resources to go ahead, despite the fact that the Aboriginal people's outstanding claim to this land had still not be resolved.

A number of things happened with the Isolated Communities Advisory Board including the retroactive caveat legislation – which was draining and frustrating and discouraging – and the Isolated Communities as an organization had basically petered out by the time the road was completed to the Lubicon community of Little Buffalo in 1978-79.⁶¹

⁶¹ Transcript of interview with Fred Lennarson, August 14, 2003

As full scale oil and gas development hit northern Alberta in the 1980s, many northern Aboriginal people decided that it was better to participate in the development and benefit from it than to be left out of it altogether. Al Rollins, former Executive Director of the Grand Council of Treaty 8 in Alberta, says

A lot of the attention of the people living in that area for centuries has been to try to figure out how to become a part of this development. . . It wasn't until the 1980s that local people started to get more aggressive, trying to figure out how to compete and get more than day labour jobs. In the 1980s and 1990s local people formed their own companies and were starting to make their own contacts with the Calgary-based companies and insisting that they be allowed to bid on these contracts. This is when the notion of traditional territory started to be used to convince industry that they had the responsibility to consult with First Nations people living in this area.

In the 1980s, the Lubicon began to follow a path different from the path that the other people were following. The other people wanted to be able to participate in the development that was happening, rather than fighting it. The Lubicon have taken a different path. . . I've spent a lot of time around Treaty 8 negotiation tables – there are 23 First Nations bands recognized as part of Treaty 8 in Alberta. There's a respect around those tables for Bernard and the Lubicon people and what they are trying to achieve. The Lubicon have decided to go it alone and the other chiefs respect that. That's been more the decision of the Lubicon rather than the other bands.

Back on the ground we have the Bigstone Cree, the Woodland Cree (Cadotte Lake), Loon River and Whitefish Lake Cree establishing their communities and trying to negotiate a role in what is happening in their part of the world. Peerless and Chipewyan bands generally fall under the umbrella of the Bigstone Cree Band but are now in negotiations.⁶²

⁶² Transcript of interview with Al Rollins, August 26, 2004

In conclusion, while commitments were made to the people living in the isolated communities of northern Alberta in the 1940s to provide reserves for them, war-time cut-backs in the federal Department of Reserves and Trusts resulted in the reserves not being surveyed as planned. Federal and provincial laws required that reserves had to be surveyed before reserves could be confirmed and the land transferred to the band. To make matters worse, Malcolm McCrimmon flew into these same communities in the summers of 1942 and 1943 and struck 700 people from band lists, depriving these people of any treaty benefits. Then, as the oil and gas potential of the area became more evident, both levels of government became reluctant to provide the bands with the reserve lands which had earlier been promised.

Decades have passed and three bands in northern Alberta are still trying to reach agreement with the federal and provincial governments - the Peerless Lake Band, the Chipewyan Lake Band, and the Lubicon Lake Band. The final chapter of this thesis will look at the current state of negotiations between the federal and provincial governments and these three groups.

Chapter 3: Treaty 8 and Northern Saskatchewan

While Treaty 8 is acknowledged to be one of the "Saskatchewan" numbered treaties because it includes territory in the north-west corner of the province, there has been virtually nothing published regarding Treaty 8 negotiations in Saskatchewan at the turn of the century and events since. In Bounty and Benevolence: A History of Saskatchewan Treaties there is a chapter on Treaty 8 which makes reference to the fact that Treaties 8 and 10 "cover most of the boreal forest country of northern Saskatchewan,"¹ but the chapter does not describe negotiations which took place with groups living in what later became Saskatchewan. The authors also do not address the fact that it was petitions from Indian people in northern Saskatchewan beginning at least by 1879 which initially prompted discussions of a new treaty, yet most of these people were left out of Treaty 8. The only other historians who have addressed this issue are Kenneth S. Coates and William R. Morrison in their Treaty Research Report: Treaty Ten (1906), which was published in 1986.

In 1876 the Dominion of Canada signed Treaty 6 with Indian bands in Central Alberta and Saskatchewan. The areas north and west of this area, covering the Northwest Territories and the northern half of Alberta and

¹ Arthur J. Ray, Jim Miller, and Frank Tough, Bounty and Benevolence: A History of Saskatchewan Treaties (Montreal and Kingston: McGill-Queen's University Press, 2000), p. 148

Saskatchewan, made up what was referred to as the "unceded portions of the Territories." After the signing of Treaty 6, Indian people living in the unceded part of northern Saskatchewan and Alberta petitioned for assistance from the government. Government records show that Indian people in what later became Saskatchewan began petitioning the federal government for a treaty in 1879. On February 7, 1879 a petition was sent to David Laird, Lieutenant Governor of the Northwest Territories, on behalf of Indian people living in the communities of Stanley, Pelican Narrows and Ile a la Crosse in northern Saskatchewan, asking for a treaty.² The people told Laird that game was scarce and they did not have enough food or clothing to survive the next winter. The local missionary sent a separate letter supporting the petitioners' request for a treaty. Their appeals fell on deaf ears as no action was taken.

On July 28, 1883 the Bishop of St. Albert forwarded a petition from the "Montagnais Indians at Ile a la Crosse," to John A. Macdonald, Superintendent General of Indian Affairs, asking for clothing and food. The Deputy Superintendent General of Indian Affairs forwarded the petition and covering letter from the Bishop to John A. Macdonald on November 5, 1883 saying

Ile a la Crosse is situated some fifty miles north of the boundaries of Treaty 6 and is therefore outside of treaty limits.

² National Archives of Canada, RG 10, Black Files, vol. 3692, File 13,979 (Ile a la Crosse Agency – Correspondence regarding a petition of the Stanley, Lac La Ronge and Pelican Narrows Indians asking that a treaty be made with them, 1879), microfilm reel C-10121

This application re-opens the question of what additional assistance, if any, is to be given to the Indians so located. (They have been receiving assistance in ammunition and twine for the past few years.)

The undersigned was informed from several quarters while in the North West that very much uneasiness exists among the Indians in the unceded part of the Territories at parties making explorations into their country in connection with railroads, etc. without any Treaty being made with them and it was reported to him by persons who were well acquainted with these Indians that they are most anxious to enter into Treaty relations with the Government and that it is in the interests of humanity very desirable that the Government should render them assistance, as their condition at many points is very wretched. The Indians in the unceded portions of the Territories are not numerous; but at the same time they could of course do great injury to any railway or other public work which might be constructed in their country, unless the Government had a previous understanding with them relative to the same.³

Macdonald forwarded the petition and letter from the Bishop to Edgar Dewdney, Commissioner of Indian Affairs for Manitoba and the Northwest Territories, on November 19, 1883 asking for his opinion on the "expediency" of signing a treaty with these Indians and for information on the "Bands and Tribes, their number, etc. also as to the best limits for new Treaties – how far North and East the same should extend, together with an approximate estimate of the costs." Dewdney responded on April 26, 1884 with information he had obtained from HBC Chief Factor Lawrence Clark from Carlton. With reference to Macdonald's questions Clark said that there were about 850 people at Ile a la Crosse according to records kept by the Roman Catholic missionaries. He reported that the conditions of the people

³ RG 10, vol. 4006, File 241,209-1, microfilm reel C-10171

were "fairly good with but very few destitute."⁴ With this information in hand the Department wrote to the Bishop of St. Albert on May 29, 1884 saying

With reference to your letter of the 28th of July last relative to the desire of the Indians whose hunting grounds are situated North of the Northern boundary of Treaty No. 6 to enter into Treaty relations with the Government and also referring to the document signed by the Indian Chief on behalf of the Indians of Ile a la Crosse on the same subject, I am directed by the Superintendent of Indian Affairs to inform Your Lordship that having caused inquiry to be made into the matter he is of the opinion that the negotiating of a treaty with these Indians may be postponed for some years or at least until there is a likelihood of the country being required for settlement purposes.⁵

The government's position was clear – no treaties, no help; and no treaty unless the government needed lands occupied by Aboriginal people for white settlement. Except in a few instances, the Department of Indian Affairs staff, under the direction of Sir John A. Macdonald, refused to provide assistance to Aboriginal people living in unceded territory. The official government position was that in areas where there had been no development or white settlement the Hudson's Bay Company should continue to provide for sick and destitute Indians as it had before the transfer. The following memorandum to Sir John A. Macdonald, Superintendent of Indian Affairs, from Lawrence Vankoughnet, his deputy superintendent, dated January 19, 1887 spells out this policy in some detail:

In compliance with the request made by the Superintendent General of the undersigned, he begs to submit his views in respect to the

⁴ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

⁵ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

applications made by the Hudson's Bay Company for relief to be furnished to the sick and destitute Indians in the regions North of the Northern boundary of Treaty No. 6, more especially at the present time to those in the Peace River District, who are stated to be suffering from some sickness namely, croup and measles.

In considering this question, it appears to the undersigned that there are two points to be looked at. 1st, what were the relations of the Hudson's Bay Company to the Indians of those regions previously to the transfer of the North West Territories to the Dominion? 2nd, have those relations been affected by the said transfer?

The Hudson's Bay Company carried on a fur trade with those Indians long prior to the transfer of the country to the Dominion. The Indians of these regions live by trapping fur-bearing animals the skins of which they sell to the traders. The transfer of the Hudson's Bay Company interest in the country to the Dominion in consideration of value received for the same by the said Company has not practically up to the present time altered in any respect the relations of the Company to the Indians of the portion of the Territories the Indian title to which remains unextinguished. No white Settlement has been effected in those regions in consequence of said transfer. . . The Hudson's Bay Company before the transfer to the Dominion would in the case of sick, aged and destitute Indians naturally provide for them when they were unable to provide for themselves. . . The undersigned does not . . . see that the Hudson's Bay Company can have any equitable claim to be relieved of the care of the sick and aged Indians in those portions of the Territories which they have transferred to the Government but where no white settlement has been effected and no interruption in this trade with the Indians has been caused.⁶

This rationale for not providing assistance to Indians living outside of treaty areas is repeated in a number of government documents from this period.

There are many examples of the government's policy of not negotiating a treaty until Indian land was needed for settlement or development.

⁶ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

Historian Frank Tough, writing about treaty negotiations in northern Manitoba after 1875, said

Aboriginal title negotiations were carried out solely at the convenience of the government. The Department of Indian Affairs ignored Indian requests for a treaty for three decades. . . Despite Indians' desire for a treaty to cover the area north of Treaty Five (1875), the timing of the adhesions and, consequently, the scope of the treaty talks were controlled by the government. This transparent case of a one-sided use of authority during this phase of treaty-making challenges the conviction that Indian policy was generally well-meaning and just.⁷

No treaty and no help were offered to Indians in the unceded territory in northern Alberta and Saskatchewan until the 1890's, when, as mentioned in Chapter 1, significant quantities of petroleum were found in the District of Athabaska and the Mackenzie River valley, and the Klondike Gold Rush was bringing many white prospectors into conflict with Indian people living in that area. The decision was taken in 1890 to go ahead with a treaty for the extinguishment of Aboriginal title over a vast tract of land north of the boundary of Treaty 6. After a number of delays, Treaty 8 commissioners were sent into northern Alberta to negotiate with the First Nations and the Metis in the summers of 1899 and 1900. There was also an expectation on the part of the government that Treaty 8 commissioners would meet with Indians and Metis in the northwestern corner of what later became Saskatchewan, as these people had been asking for a treaty since at least 1879.

⁷ Frank Tough, "As Their Natural Resources Fail": Native Peoples and the Economic History of Northern Manitoba, 1870-1930 (Vancouver: UBC Press, 1996), p. 99

The commissioners for Treaty 8 (1899, northern Alberta) had been authorized to extend their negotiations into the north Saskatchewan country. They had failed to do so, partly because of the difficulty in covering the immense territory assigned them and also because the route they followed in their negotiations went nowhere near the regions from which petitions were now coming. Moreover, the principal purpose of the Treaty Eight negotiations was to extinguish aboriginal title in lands which were expected to face development pressure due to the commencement of the Klondike gold rush. Since the Portage la Loche and Ile a la Crosse regions were in the Hudson Bay drainage basin, and hence unaffected by the rush to Dawson and the Klondike by way of the Mackenzie River, the commissioners had not felt obligated to extend their work into unceded districts to the east.⁸

Treaty 8 Commissioner David Laird did make one trip into northern Saskatchewan when he crossed Lake Athabasca and met with Indians at Fond du Lac on July 25 and 27, 1899. Father Gabriel Breynat traveled back to his mission at Fond du Lac with Laird's treaty commission, but had not intended to take part in the negotiations. By the time the commission arrived the Indians assembled at Fond du Lac had waited a long time and were impatient for the negotiations to begin. They elected a chief, Maurice Piche (also known as Moberley), and councilors, and then Laird read the terms of the treaty. Immediately, as Father Breynat later reported, there were problems.

The meeting took place a few steps from the mission. Right after the text of the proposed treaty had been read, translated and explained, the Honorable Laird knocked at my door.

"Complete failure!" he said. "We must fold down our tents, pack our baggage and leave."

⁸ Kenneth S. Coates and William R. Morrison, "Treaty Research Report: Treaty Ten (1906)," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986, p. 20

He explained that as soon as the discussion started, Chief Moberley ... nearly got into a fight with the interpreter, good-natured Robillard. . . The chief had jumped into his canoe and left to the other side of the bay.

Father Breynat wrote that Laird's distress convinced him that he needed to intervene in the negotiations even though he had decided earlier to not get involved.

I called for one of the elected councilors, Dzieddin ("The Deaf"), known for his good character, his great heart and his good judgement. I explained to him: "If Chief Moberley, a great hunter and a very proud man, can despise and reject the help offered by the government, many old people without any income and many orphans, will appreciate receiving a five dollar annuity along with free powder, bullets, fishnets, etc." I added, "Accept and sign the treaty on behalf of all those poor people. Anyway, even all of you together, all the Caribou Eaters, you cannot help it. You may accept the Treaty or not, but in either way the Queen's Government will come, and set up its own organization in your country. The compensation offered by the Government may be quite small, but to refuse it would only deprive the poor people of much-needed help."

Dzieddin was convinced by this argument and he signed the treaty. Chief Moberley himself finally signed the treaty after seeing some of his friends sign the treaty.⁹ Fumoleau said that treaty records indicated that 383 members of Maurice's Band took treaty at Fond du Lac on July 25 and 27. He also wrote that Breynat "never regretted his role in the Fond du Lac negotiations. He considered the Treaty to be primarily a friendship treaty, as did most of the people in the North."¹⁰ Oral testimony from Treaty 8

⁹ Father Gabriel Breynat, OMI, *Cinquante Ans au Pays des Neiges*, (Montreal: Editions Fides, 1948) vol. 1, pp. 188-90, as quoted in *As Long As This Land Shall Last* by Father Rene Fumoleau (Calgary: University of Calgary Press, 2004), pp. 81-82

¹⁰ Fumoleau, p. 83

elders in northern Saskatchewan quoted in Fumoleau and Treaty Elders of Saskatchewan also supports this position.¹¹

Today there are three First Nations Bands in Saskatchewan which are covered by Treaty 8: the Fond du Lac Denesuline Nation, the Black Lake Denesuline Nation, and the Clearwater River Denesuline Nation. At some point Maurice's Band became known as the Fond du Lac Band. The Black Lake Band, formerly known as the Stony Rapids Band, was formed in 1949/50 when 258 members broke away from Fond du Lac Band.¹²

Members of the Clearwater River Dene Nation, formerly known as the Portage La Loche Band, signed Treaty 8 at Fort McMurray on August 4, 1899. The Treaty Commissioners' report of September 22, 1899 said that Commissioner McKenna "secured the adhesion of the Chipewyan and Cree Indians" at Fort McMurray on August 4. While McKenna likely met with members of different Cree and Chipewyan bands on that day, government reports refer to this group as the "Cree, Chipewyan Band". The people who signed Treaty 8 at Fort McMurray who were not from the "Fort McMurray Band" were referred to in government reports as "stragglers" of the "Fort McMurray Band". A document obtained from DIAND files entitled "Historical Notes – Portage La Loche Band" said

¹¹ "The Elders believe that they never gave up their territorial rights as they are defined by the concepts of *witaskewin* and *pimacihowin* – these rights are fundamental and integral to the treaty relationship and in fact stand at variance with the written texts of the treaties in Saskatchewan." Quote taken from Harold Cardinal and Walter Hildebrandt, Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day be Clearly Recognized as Nations, (Calgary: University of Calgary Press, 2000), p. 58

¹² DIAND file 601/30-1 (Letter from N.J. McLeod to Chief, Reserves and Trusts, October 30, 1959)

The Portage la Loche Band originally formed part of the "Cree, Chipewyan Band" which signed Treaty 8 under Headmen Seapotakinum and Adam Boucher on August 4, 1899 at Fort McMurray. By 1908 two groups of stragglers of Fort McMurray Band had been paid their annuity at Buffalo River. In 1909 the Annuity Paylists listed 44 members paid at Portage La Loche, and in 1926 both groups of stragglers were combined and listed as Portage la Loche Band (66 members).¹³

As with the Indian people who signed Treaty 8 in northern Alberta, the main concern of the Indian people living in Saskatchewan who signed Treaty 8 was to ensure "the survival and well-being of their children, grandchildren and future generations of First Nations people."¹⁴ They asked for assurances from the treaty commissioners that they would be as free to hunt, trap, and fish over their land after signing the treaty as before. The Commissioners' report stated

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interests of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.¹⁵

¹³ From DIAND file in Claims and Historical Research Centre, entitled "Treaty 8: Portage La Loche Band." The document is dated January 1974.

¹⁴ Harold Cardinal and Walter Hildebrandt, p. 43

¹⁵ http://www.ainc-inac.gc.ca/pr/trts/trty8/rpt_e.html , "Report of Commissioners for Treaty No. 8," September 22, 1899

Most of the First Nations who signed Treaty 8 did not want to be confined to reserves, so it was agreed that the allocation of reserve land could be done at a later date. The bands understood that if and when they wanted reserve land it would be given to them according to the land provisions of Treaty 8. Yet when the Treaty 8 bands in Saskatchewan decided that they needed reserves and began petitioning the government for their land entitlements beginning in the 1930s, they were obliged to wait for decades before they got the reserve lands they were entitled to. One of the reasons for the delay was that the provincial government had given mining companies mineral leases on land claimed by the bands.

Negotiations for reserve land were now complicated by the fact that mining companies had legally binding contracts with the provincial government and the federal and provincial governments had to find solutions which would satisfy the bands as well as the mining companies. The other reason for the delay may simply have been that these were people and land in the remote north-western corner of Saskatchewan, and the needs of these people were not seen as a priority by the governments of the day.

Chief Alphonse Piche of the Portage La Loche Band wrote to the Indian Agent in 1937 asking for reserve lands to be set aside for the band at Whitefish Lake and Swan Lake,¹⁶ but reserve lands were not finally transferred to the band until 1970. Government records indicate that

¹⁶ DIAND file 671/30-19, vol. 1

discussions regarding the creation of reserves for the Stony Rapids Band began in 1959. Indian Reserve (I.R.) #226 was transferred from the province to the band in September 1970,¹⁷ I.R. #224 in April of 1972,¹⁸ and I.R. #225 in October 1973.¹⁹

In August 1977, the federal Minister of Indian Affairs, Warren Allmand, announced that agreement had been reached among the Federation of Saskatchewan Indians (FSI), the Province of Saskatchewan, and the federal government on how to move to resolve outstanding treaty land entitlement claims in Saskatchewan. One of the principles of the "Saskatchewan Formula" was that, for the purposes of calculating treaty land entitlement, band membership would be as of December 31, 1976. On October 13, 1978 the provincial Minister of the Department of Northern Saskatchewan, Ted Bowerman, wrote to the federal Minister of Indian Affairs and Northern Development, Hugh Faulkner, indicating the province's willingness to transfer an additional 31,076 acres near Elizabeth Falls "to meet the full and final land entitlement of the Stony Rapids Band." The land was finally transferred to the band through Order In Council 1981-898 dated April 2, 1981.²⁰

The Treaty 8 band that had the greatest difficulty in getting the reserve lands that it was entitled to was the Fond du Lac Band. On October 29,

¹⁷ DIAND file 672/30-7-226, Claims and Historical Research Centre, INAC, Gatineau, Quebec

¹⁸ DIAND file 672/30-7-224, Claims and Historical Research Centre, INAC, Gatineau, Quebec

¹⁹ Privy Council Resolution 1970-1822, October 21, 1970, DIAND file 672/30-7-225, Claims and Historical Research Centre, INAC, Gatineau, Quebec

²⁰ Privy Council Order 1981-898, April 2, 1981, Instrument Number 74423

1959 W.G. Tunstead from the federal Department of Citizenship and Immigration wrote to N.J. McLeod, Regional Supervisor for Saskatchewan, saying that members of the bands in northern Saskatchewan who had still not received reserve land had raised the issue following treaty payments that year at La Loche. Tunstead recommended that outstanding treaty land entitlement be resolved quickly.

May I point out that in view of the present mineral development throughout the north that if it is the intention of the Department to have lands set aside for the Bands, who have not as yet received their reserve locations, consideration should now be given to have suitable sites set aside for the different Bands before the land is all taken up by staking or otherwise.²¹

By January 1961 there was government correspondence which confirmed that the northern bands had made specific requests for reserve lands, but it still took years before the transfers were finalized. In the meantime, the provincial government granted permits to mining companies that wanted to do exploration work on land which had been chosen by the Fond du Lac Band for their reserves. This greatly complicated negotiations once all of the parties were finally ready to come to an agreement.

Another reason for the delay in getting reserve lands approved was that the provincial government of Ross Thatcher, which was in power from 1964 to 1971, initially refused to release provincial land for reserves, even though they were obliged to do so under the terms of the Saskatchewan

²¹ DIAND file 601/30-1, vol. 1, Claims and Historical Research Centre, INAC, Gatineau, Quebec

Natural Resources Act of 1930.²² On June 20, 1969 the federal Deputy Minister of Indian Affairs and Northern Development, J.A. MacDonald, wrote to his Minister:

In an interview last September 10th, Premier Thatcher stated that Saskatchewan would not give up any more provincial land for reserve purposes. On October 30, his Government's policy was communicated to you by letter from Mr. Barrie. It is the view of the Provincial Government that the Indian problem cannot be resolved by creating new reserves and that, to improve their economic and social conditions, Indians must be prepared to relocate in areas where employment and other opportunities are available. . . Mr. Barrie's December 27 letter set out the Province's position in clear and unmistakable terms. It seems that Saskatchewan neither intends to honour its obligation under the 1930 Resources Agreement nor to present alternative proposals for consideration by the Indian people. Moreover, the Province refuses to accept our contention that there has been a commitment made to those Indian Bands which, during the past five years have, with provincial approval, selected lands in fulfillment of their Treaty entitlement. . .

The Indian Bands have expressed profound concern over the lengthy delay in establishing these reserves which have substantial economic potential. We have received resolutions from the Fond du Lac, Black Lake and Lac La Ronge Indian Bands requesting the Department to take action to have the lands selected set apart for their use and benefit. . . It may well be that legal proceedings will have to be instituted by the Attorney General of Canada and in the light of the possible political implications, I should like to have your direction as to our future course of action.¹⁹

²² On March 20, 1930 a "Memorandum of Agreement" was reached between Saskatchewan and Canada by which the administration and control of the natural resources of the province were to be transferred to the Province. This agreement became the Saskatchewan Natural Resources Act which was assented to on May 30, 1930. Section 10 of this Act requires that the Province "will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may . . . select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the province . . ." DIAND file 601/30-1, vol. 2

¹⁹ DIAND file 601/30-1, vol. 2

The provincial government did finally agree to release land for the establishment of northern Indian reserves, but a final treaty land entitlement agreement with the Fond du Lac Band was not signed until March 20, 1986.

So what about all of the other people in northern Saskatchewan who had petitioned for a treaty but who had not been included in Treaty 8? Coates and Morrison say that "the Treaty Eight commissioners recommended that the remaining gap between their treaty and Treaties Five and Six be absorbed into Treaty Eight."²⁰ However, nothing happened until 1902 when the Metis people at Ile a la Crosse asked to be given scrip. Two letters supporting their petition were sent to Sir Wilfrid Laurier, the Prime Minister, who on March 6, 1902 asked J.A.J. McKenna of the Department of Indian Affairs for his response. McKenna responded on April 7, 1902 saying

The territory being unceded, I have no authority under my Commission to extinguish the aboriginal claims of the Halfbreeds. Following the policy adopted in the making of Treaty 8, the Indian title and the claims of the Halfbreeds would be concurrently extinguished; and an arrangement for the issue of scrip would therefore have to wait until a decision were come to as to taking a cession of the territory.²⁰

Undeterred, petitions on behalf of the Indians and Metis at Ile a la Crosse continued to be sent to the government, and on September 27, 1902 McKenna wrote a memorandum to Clifford Sifton, Minister of the Interior, in which he said

²⁰ Coates and Morrison, p. 20

²⁰ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

I place herewith a letter addressed to you by Mr. Davis, M.P. . . . The letter covers a Petition of certain Halfbreeds of Isle a la Crosse and communications with Bishop Pascal and Father Raplt . . . The subject of the Petition and communications is the extinguishment of the title of the aborigines of the Isle a la Crosse country. That country lies between Treaties 5, 6 and 8 as shown on the attached map. . .

You will remember that there was great distress in the country last year owing to floods, and that upon Petition provision was made for affording relief through the Hudsons Bay Company. From the report made by Inspector Chisholm, who was sent into the country at that time, it would appear that the population of Isle a la Crosse was 20 whites, 150 Halfbreeds and 700 Indians. . .

The position taken by the Halfbreeds and Indians of the territory is simply that they should be dealt with as the aborigines of the surrounding territory. When they have another bad season there will be another demand for help. In that event it is a question whether it would not be better to give them (as eventually will be done) the benefits of the Athabasca settlement rather than to make a further charitable grant.

A glance at the map may give rise to the question: Why was not Treaty 8 made to cover this territory? The answer is: It is entered by a route other than the line of travel the Commissioners had to follow and which time would not allow them to extend. They were aware, however, that there would be difficulty in distinguishing between Indians paid at McMurray whose habitat is in the territory covered by Treaty 8 and the aborigines of Lac La Loche in the Isle a la Crosse country, and that eventually the bounds of the treaty would have to be so extended as to round off the ceded territories by covering the gap between Treaty 5, 6 and 8.²¹

McKenna's letter gives clear evidence that Indian people living in the "unceded territory" north of Treaty 6 in Saskatchewan in 1902 were still experiencing the same hardships that they had been experiencing since at least 1879. McKenna also acknowledges that there would be reason to

²¹ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

suggest that this area should have been included in Treaty 8 negotiations in 1899 and 1900.

On October 14, 1902 McKenna wrote a memorandum to the Minister of Indian Affairs in which he recommended that "a cession of the country be taken in the form of an adhesion to Treaty 8." He also said that "as to the extinguishment of the Halfbreed title we shall have to guard against an issue of scrip to children born since 1885 of parents who have participated in the recent issue who may move to the Isle a la Crosse country for the very purpose of getting scrip as well as against an issue to children born to Athabasca Halfbreeds since the cession of that country."²² On October 21, 1902 McKenna wrote to Bishop Pascal of Prince Albert and T. Davis, MP for Prince Albert, advising them of the government's intention of "having the aboriginal title extinguished in the Isle a la Crosse country." In his letter to Bishop Pascal, McKenna wrote

Your Lordship will observe that there is a gap between Treaties 5, 6 and 8. I think in the taking of a surrender of the Isle a la Crosse country this gap should be covered. It might perhaps be well to confine ourselves to the small northern portion of Saskatchewan not yet ceded and the portion of Athabasca not covered by Treaty 8 so as not to impinge on Keewatin . . . I should be obliged if your Lordship would kindly indicate on the map the points at which the Indians and Halfbreeds are grouped and the approximate number of each.²³

There continued to be correspondence between federal government employees regarding the "Indians at Portage La Loche and Isle a la Crosse" for several years. On March 15, 1904 Treaty 8 Inspector Conroy wrote to

²² RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

²³ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

Mr. Frank Pedley in the Department of Indian Affairs saying "On my last two trips to Fort McMurray these Indians asked to be brought into Treaty. I do not know why they were not included in the Treaty when made by the Royal Commissioners. As far as I can see they have as much right to be included as those Indians already treated with."²⁴ The Department forwarded

Conroy's letter to David Laird, who had been one of the Treaty 8

Commissioners. Laird responded on April 29, 1904 saying

Mr. Conroy remarks he does not know why these Indians were not included in the treaty made by the Royal Commissioners. This point is easily explained. The scope of the Commissioners' instructions was to obtain the relinquishment of the Indian and Halfbreed title in the region of Lesser Slave Lake, Peace River from above Fort St. John to Great Slave Lake, and the Athabasca River – or in other words, that tract of territory north of Treaty 6 to which Governmental authority had to some extent been extended by sending Northwest Mounted Police there to protect and control whites who were going into the country as traders, travelers to the Klondike, explorers and miners. . . Further there was no particular necessity that the treaty should extend to that region. It was not a territory through which a railway was likely soon to run, nor was it frequented by miners, lumbermen, fishermen, or other whites making use of the resources of its soil or waters, in which case, in my opinion, the Indians and Halfbreeds are better left to their hunting and fishing as a means of making a livelihood. The conditions there are the same still, and I therefore do not approve of any immediate steps being taken to include the territory mentioned by Mr. Inspector Conroy in treaty limits. The matter, I suggest, may very well stand over for the present; and, when the autonomy question is settled in the Northwest Territories, if it is found that any Province, or organized territory with representation, extends over a considerable tract of country in which the aboriginal title has not been relinquished, then in such case . . . a Treaty should be made without delay.²⁵

²⁴ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

²⁵ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

Laird's comments are defensive and not entirely accurate. As indicated in Chapter 1 of this thesis, the Privy Council order of June 27, 1898, gave the Treaty 8 commissioners the discretion to determine the lands to be included in the treaty. While it is true that the government's priority was to negotiate a treaty with the Indians in the territory which was affected by mining activity in northern Alberta, north-eastern British Columbia and the Great Slave Lake region, the commissioners were nevertheless given the authority to extend negotiations further if they had the resources to do so.

Thus it was that the issue of a treaty with the Indians living north of Treaty 6 was not addressed until after the Province of Saskatchewan was created in 1905. On October 7, 1905 David Laird wrote to the Department of Indian Affairs recommending that

the whole unceded portion of Saskatchewan should next year be covered by a treaty with the Indians occupying the same. . . I, however, do not think that this large uncaded territory should be dealt with merely as an adhesion to Treaty 8. The nearest way to reach it is from Prince Albert, while the payments of Treaty 8 are made by the route of the Peace and Athabasca rivers. . . The terms of Treaty 8 are probably more suitable to these northern Indians than those of Treaty 6.²⁶

On July 20, 1906 the Minister of Indian Affairs established a commission to negotiate Treaty 10 with the Indians living partly in the Province of Saskatchewan and partly in the Province of Alberta and lying to the east of Treaty 8 and north of Treaties 5 and 6. J.A.J. McKenna was appointed as

²⁶ RG 10, vol. 4006, file 241,209-1, microfilm reel C-10171

the Commissioner for Treaty 10 and empowered to negotiate a treaty with the Indians and to issue scrip to Metis living in the area. On August 26, 1906 McKenna arrived at Ile a la Crosse, and on August 28 he met with the Indian and Metis people who had gathered there to meet with him. Thus the people in this area were finally admitted to treaty twenty-seven years after they first petitioned the government for a treaty.

In conclusion, while Indian people near Ile a la Crosse, Pelican Narrows, and Stanley Mission began petitioning the federal government for a treaty at least by 1879 and were supposed to have been included in Treaty 8, these people were not in fact included in a treaty until Treaty 10 was negotiated in 1906. Those Indian people living in Saskatchewan's far north-west corner who were included in Treaty 8 negotiations at Fond du Lac and Fort McMurray spent many years petitioning the government to give them the reserve lands that they were entitled to under treaty. Reserve lands were not finally transferred to these Dene bands until the 1970s and 1980, and there are still outstanding treaty land entitlement issues related to at least the Clearwater River Dene Band.²⁷ In Saskatchewan as elsewhere, when the federal government was anxious to acquire Indian land for development it was quick to negotiate treaties with First Nations, but our governments,

²⁷ "Abstract: Clearwater River Dene Nation [Treaty Land Entitlement] The claimant alleges that the Crown owes it additional reserve land under Treaty 8. The file is currently closed at the request of the First Nation."
<http://www.indianclaims.ca/english/fqueryhit.idq?CiRestriction=Clearwater+River&CiM...11/26/2004>

both federal and provincial, have been very slow to give First Nations people the land and resources that they were promised.

The People Left Out of Treaty 8

Conclusion

The haste of the Treaty Commissioner in securing Indian signatures on a piece of paper removes any illusions that the Treaty was a contract signed by equal partners. How to characterize it remains a question, but the fact remains that Government officials in Ottawa, who drafted the terms of the Treaty, had little knowledge or comprehension of Indians, or their way of life in the Northwest.¹

While it could be argued that the statement quoted above could apply to any of the treaties which Canada signed with First Nations in the late nineteenth and early twentieth centuries, it is, in fact, a statement made by Father Rene Fumoleau regarding Treaty 8 negotiations. Treaty 8, as the first of the "northern" treaties, was negotiated once significant mineral deposits had been discovered in northern Alberta and the Klondike Gold Rush was creating tensions in north-eastern British Columbia and northern Alberta between white prospectors and Aboriginal inhabitants. Although Aboriginal people north of Treaty 6 had been petitioning for a treaty since the 1870s, Treaty 8 was negotiated when the Dominion government decided that it needed the land for development purposes.

The government's primary objective in negotiating Treaty 8 was to gain Indian surrender of as large a tract of land as possible with as little expense and effort as possible. While this may have also been the case with other

¹ Rene Fumoleau, OMI, As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939, 2nd Edition (Calgary: University of Calgary Press, 2004), p. 107

treaties, the government documents cited earlier in this thesis make it clear that the government did not believe that it had the responsibility to send negotiators in to all of the territory covered by Treaty 8, that it expected that once Indian people heard that there were going to be treaty negotiations that they would come to meet with the treaty commissioners, and that people living outside of the area affected by mining activities were not a priority. Negotiations were concentrated in northern Alberta and north-eastern British Columbia because those were the areas through which white prospectors were traveling on their way to the Klondike. The government wanted to extinguish aboriginal title to this land so that it could open the area up to mineral development without interference from the Indian people living in the area. The fact that this land, particularly in northern Alberta, is very rich in resources like oil, gas, and timber has made it extremely difficult for the original inhabitants of the land to negotiate agreements with both the federal and provincial governments on their terms. The federal and provincial governments claim to have extinguished aboriginal title to the land in northern Alberta in 1899 and 1900 to justify the fact that development of the north has gone ahead despite the objections of some of the people who have lived there for hundreds or thousands of years.

First Nations in Saskatchewan who signed Treaty 8 in 1899 waited decades before they were finally given the reserve lands they had asked for.

Other Indian people in Saskatchewan who had petitioned for a treaty since at least 1879 had to wait until Treaty 10 was negotiated in 1906 before they were brought into treaty.

People left out of Treaty 8 in Alberta have had an even more difficult time getting their rights recognized and their claims settled. After the collapse of the Isolated Communities Advisory Board in the late 1970s the federal government negotiated a treaty land entitlement agreement with the Whitefish Lake Indian Band (Utikoomak Lake) on January 11, 1990, and Treaty Settlement Agreements with the Woodland Cree Indian Band on August 20, 1991 and the Loon River Cree Indian Band on February 5, 1999. Some of the land which was given to these groups as reserves was land which the Lubicon Lake Cree Band had claimed as part of its traditional territory.

The first page of the Treaty Land Entitlement Settlement Agreement between the Government of Canada and the Whitefish Lake Indian Band refers to the band having adhered to Treaty 8 in 1901.² In an interview with Fred Lennarson, technical advisor to the Lubicon Lake Cree Band, in August 2003, Lennarson said that "the people from Whitefish Lake technically weren't covered by Treaty 8 until they signed an adhesion to Treaty 8 in 1986." A Department of Indian Affairs and Northern

² "Treaty Land Entitlement Settlement Agreement Between Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development and the Whitefish Lake Indian Band," January 11, 1990, p. 1. Copy obtained from the Alberta Department of Aboriginal Affairs and Northern Development.

Development document in the "Whitefish Lake (incl. Lubicon)" file in the Claims and Historical Research Centre says

It is not yet known whether the Whitefish Lake Band were represented at the signing of Treaty #8 in 1899 or 1900; however the majority of the Band (no designated Chief or headman) appeared on the paylists for 1901 and received arrears for the previous two years.³

The same document indicates that 47 people from the Whitefish Lake Band were added to the Treaty 8 payroll of 1901. Clearly, the federal government has chosen to interpret the fact that 47 people from Whitefish Lake were added to the Treaty 8 payroll as the band signing an adhesion to Treaty 8 in 1901. This would be consistent with the federal government's position that the Indians of the Lesser Slave interior were members of bands that signed Treaty 8 in 1899 and 1900, and that their title to the land was extinguished at that time. The Alberta government takes the same position. "According to the government, Aboriginal peoples in Alberta have surrendered all land in treaties that extinguished their Aboriginal title. Therefore there should be no Comprehensive Claims based on assertion of Aboriginal title."⁴ It is clear that the primary reason why both the federal and provincial governments insist that aboriginal title to land in Alberta has been extinguished is that they want to prevent First Nations from claiming title to some of the most resource-rich land in the province.

³ "Treaty No. 8: Treaty Provisions: Reserve Lands: Whitefish Lake (incl. Lubicon)," Claims and Historical Research Centre, INAC, Gatineau. Document dated March 1974.

⁴ <http://www.ualberta.ca/~esimpson/claims/alberta.htm> "Aboriginal Claims in Canada: Aboriginal Claims in Alberta," 12/6/01

The group that has stood up to the federal and provincial governments the longest and that has worked for years to negotiate a comprehensive claims agreement that involves land, economic development, and self government is the Lubicon Lake Cree Band. The website "Aboriginal Claims in Canada," which for years was maintained by Elaine Simpson, presently Instruction Reference Assistant, John W. Scott Health Sciences Library, University of Alberta, included the following statement in 2001: "The Lubicon Indian Band in Alberta is attempting to dispute the official framework and assert the continuing existence of Aboriginal title."⁵ The federal government, as a way of undermining the Lubicons' efforts, has variously argued that the Lubicon Lake Band are a "break-away group" from the Whitefish Lake Band and as such are only entitled to a portion of the reserve land of that group, or that the Lubicon do not meet the definition of "Indian Band" as set out in the Indian Act, or that there are too few members of the Lubicon Lake Band to warrant a reserve. Despite all of their efforts to discredit and wear down the Lubicon, the Lubicon have continued their struggle and refused to give up, in large part because their leadership is determined to negotiate a settlement which will give the Lubicon people some control over their own lives as well as lasting economic benefits.

⁵ <http://www.ualberta.ca/~esimpson/claims/Alberta.htm> "Aboriginal Claims in Canada: Aboriginal Claims in Alberta," 12/6/01

Bernard Ominayak was elected chief of the Lubicon Lake Band in the late 1970s and in 1979 asked Fred Lennarson, a civil rights activist from Chicago, who worked for Harold Cardinal and the Indian Association of Alberta in the 1970s, to join the Lubicon struggle. Lennarson agreed. Then the oil boom hit.

In 1979, the Iranian revolution interrupted oil supplies from the Persian Gulf, forcing world prices higher and making profitable the extension of all-weather roads into the Lesser Slave interior. Big discoveries were made south of Whitefish Lake and east of Loon Lake. South of Little Buffalo, the Seal and Slave fields opened. . . In the Lubicon area, exploration and drilling permits commanded the highest prices in Alberta, signaling a storm of new activity. During a single winter in 1979-80, thirty wells were drilled. At least forty were drilled the following year. By 1984, more than four hundred oil and gas wells had been drilled within a fifteen-mile radius of Little Buffalo, and more than one hundred oil companies and subcontractors were working the area.

All the work interfered with trappers. Company signs staked out the bush like sovereign flags: Norcen, Texas Pacific, Mobil, Husky Oil. Gates were erected across roads. Oil company guards hired to keep an eye on rivals forced trappers to sign in and out. Suddenly the bush was colonized by nodding pump jacks, clusters of trailer camps, "No Trespassing" signs and burn-off flares lighting the night sky. . .

Terrible fires raged through the territory. In 1980, fire destroyed as much area as in the previous twenty years. Each of the next two years was worse. In the three years combined, fires destroyed 641 square miles of bush, forest service records show. Most of the blazes were believed to have started from natural causes, but not all, and Lubicon members hired to fight the fires twice complained of being ordered to stand idle as flames roared out of control. . .

All trappers found themselves working harder for diminishing returns. Statistics gathered by Kenneth Bodden, a wildlife specialist at the Boreal Institute for Northern Studies at the University of Alberta, showed that the average family made more than \$5,000 from trapping in the winter of 1979-80. Earnings dropped to \$4,000 a family the following year, to \$3,200 the year after that, to \$800, to

\$400, to almost nothing. With trapping gone, there was almost nothing to turn to but welfare, which rose from 10 per cent of the work force to 90 per cent during the same four years.

"By the winter of 1982-83", Lennarson wrote, "the previously viable traditional economy of these aboriginal groups was for all practical purposes destroyed."⁶

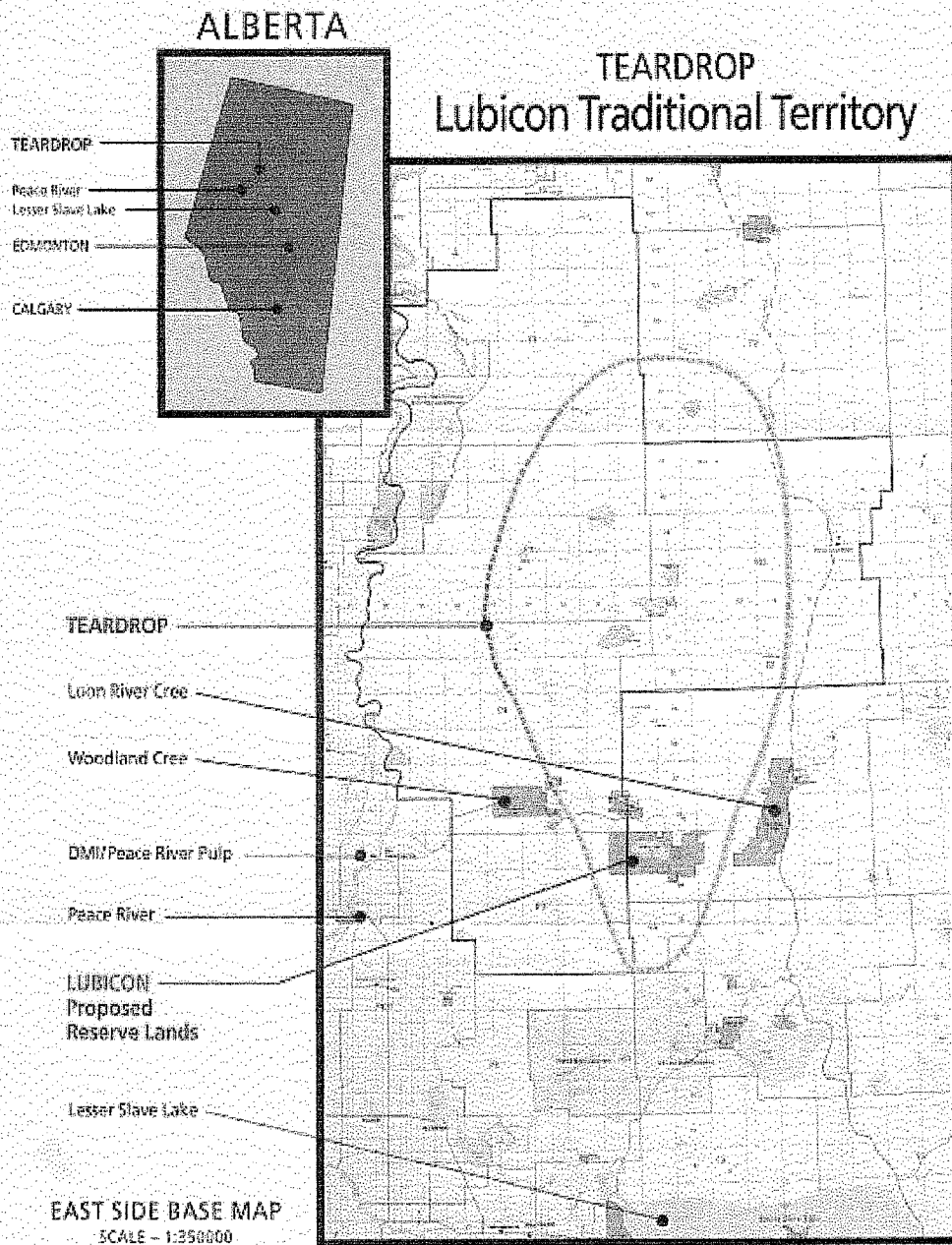
While a lot of the development activity was being done on Lubicon land, the Lubicon were not the only group affected by the oil boom. "Throughout the Lesser Slave interior the oil boom drove native hunters and trappers from the bush to live on welfare in the seven isolated communities."⁷ All of these communities suffered the devastating social effects of the collapse of their traditional economy.

It is not, therefore, surprising that six out of seven of the isolated communities have chosen to set aside their original position that they were groups left out of Treaty 8 living on land to which aboriginal title had never been surrendered and to negotiate agreements with the government on the government's terms.

Of the seven isolated communities, the only three which have still not reached agreements with the federal government are the Lubicon Lake Band, the Peerless Lake Band, and the Chipewyan Lake Band. When I was in Ottawa/Gatineau in September 2004 doing thesis research I had the opportunity to meet the Chief Federal Negotiator for all three of these files, Sharman Glynn. I asked her how negotiations with the Peerless Lake and

⁶ John Goddard, Last Stand of the Lubicon Cree (Vancouver/Toronto: Douglas & McIntyre, 1991), pp. 75-77

⁷ Goddard, p. 78



Map produced by DM/Daishowa-Marubeni International Ltd.
Peace River Pulp Division



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Chipewyan Lake Bands were going. She said that it has always been the position of the federal government that the people who live at Peerless Lake and Chipewyan Lake are part of the Bigstone (Wabasca) Cree Band and that negotiations with those groups are going forward on that basis. Ms. Glynn then referred me to an Indian Claims Commission report entitled Bigstone Cree Nation Inquiry: Treaty Land Entitlement Claim, which was published in March 2000. The report describes the band as follows:

The concentration of the six existing Bigstone Reserves in the vicinity of North and South Wabasca, Sandy and Calling Lakes may suggest that the population of the Bigstone Cree Nation is, and has historically been, concentrated solely in these locations. In fact, evidence provided by Bigstone elders, both in community sessions and in previous forums, details longstanding occupation, on at least a seasonal basis, of dozens of lakes and other locations over a massive area of northern Alberta.⁸

The report goes on to say:

Historians of the "isolated communities" north of Wabasca have concluded that few residents of these communities entered Treaty 8 in its early years, a conclusion borne out by the evidence of elders and other documentary sources. No Trout Lake residents entered treaty when the adhesion was signed at Wabasca in 1899 . . . Elders interviewed at Chipewyan Lake in 1980 remembered that only two families from their community entered treaty in the early years of the 20th century, although a study carried out in the 1970s indicated that five of the families who were taken into treaty in 1901 after scrip applications were refused were from Chipewyan Lake.

The limited impact of the work of the Treaty and Scrip Commissions on the population of the "isolated communities" was not unknown to the Commissioners themselves.⁹

Then the report says:

⁸ Indian Claims Commission, Bigstone Cree Nation Inquiry: Treaty Land Entitlement Claim, March 2004, p. 7

⁹ ICC report, pp. 17-18

Over the decade following Commissioner Macrae's report, few people from the "isolated communities" entered treaty with the Bigstone Band. The only adhesion from these communities took place in 1905, when four families from Chipewyan Lake numbering 15 people adhered to treaty.¹⁰ (italics added)

The reason why few people from isolated communities like Chipewyan Lake, Peerless Lake, and Trout Lake were entering treaty with the Bigstone Band is that they did not see themselves as members of that band! People in these communities had been asking to be taken into treaty since at least the 1920s. On April 5, 1922 Y.M. Floc'h, OMI, wrote to the Minister of the Interior on behalf of the people living in the bush north of Grouard who had not been taken into treaty. He said

Though the people in question, are as pure Indians as the other belonging already to the Indian treaty, they do not belong to the Treaty from the beginning, for they were too far scattered all over at the time of the Treaty in 1899 and 1900, signed in different places at Lesser Slave Lake and White Fish Lake. . . (N)ext June at White Fish Lake, some of them will ask for their admission and even with the hope to get the Treaty money.¹¹

Chapter 2 of this thesis includes the response given by Indian Agent Harold Laird when the Department of Indian Affairs in Ottawa forwarded Father Floc'h's letter to him and asked him for information on these groups. Laird confirmed that there were people living in isolated communities north of Whitefish Lake and Wabasca at "Prairie Lake, Otter Lake, Fish Lake, Loon Lake and the small lake north of the Peerless (Trout) Lakes." He said

¹⁰ ICC report, p. 18

¹¹ National Archives of Canada, RG 10 Black Series, vol. 7972, file 62-131 (Lesser Slave Lake Agency – Band Membership)

I would estimate their number between 80-100. In my report on the Annuity Payments in 1911, I made mention of the Indians, not in Treaty, to the north of Trout Lakes and in 1912 I made report of the non-Treaty Indians north of Whitefish Lake. Both at Whitefish Lake and Wabasca a few of the above have been taken into Treaty each year since the above dates.¹²

The Indian Claims Commission report on the Bigstone Cree Nation

Inquiry contains the following section on "Post-Survey Adherents" to Treaty

8:

After paying annuities in Wabasca in the autumn of 1911, Assistant Indian Agent Harold Laird, likely influenced by the lateness of the season, elected to proceed directly north of Fort Vermillion rather than take the much more circuitous route by way of the Peace River. Accordingly, he descended the Wabasca River to the mouth of the Trout River, then ascended the latter to the HBC outpost at Trout Lake to pay the small number of *Bigstone members* resident there. Laird then continued north, following a trail along the west side of Graham and Peerless Lakes.¹³ (*italics added*)

Nowhere in any of the correspondence between the Department of Indian Affairs and Indian agents in northern Alberta prior to the 1970s does anyone ever refer to the members of the "isolated communities" as being members of the Bigstone Cree Band. Band members never referred to themselves as such, and missionaries and others who wrote on their behalf always referred to them as bands which had lived in certain areas for many years and had been left out of treaty.

The Indian Claims Commission report says that Laird told the department that he had "no doubt that he (Chief Everlasting Voice) and his Band could be induced to enter Treaty, if the Department so desired." The

¹² RG 10, vol. 7972, file 62-131

¹³ ICC report, pp. 23-24

department did not, and a note on the letter says "wait till Indians ask to be taken into Treaty."¹⁴

The Bigstone Inquiry report goes on to say:

A decade passed before another suggestion was made to bring the population of the "isolated communities" within the membership of the *Bigstone Cree Nation*. In April 1922, Father Y.M. Floc'h, an Oblate missionary working out of Grouard who made at least an annual tour of the vast area north of there, wrote to the Minister of the Interior recommending that the "Pure Indians" he encountered during his travels be taken into treaty.¹⁵ (*italics added*)

In the two block quotes included above, it is clear that the Indian Claims Commission report is trying to suggest that the people living in the isolated communities were generally regarded as members of the Bigstone Cree Band, but they were not. Father Floc'h and Harold Laird described these people as Indians who had not signed the treaty, although some members of these bands had signed treaty paylists at Wabasca and Whitefish Lake after 1900. At no point in his letter does Father Floc'h refer to these people as members of the Bigstone or Wabasca Band, nor does Harold Laird. Many years later, the Indian Claims Commission and the federal government appear to be trying to impose an interpretation of historical events which supports their contention that all of the groups in northern Alberta belonged to bands which signed Treaty 8 in 1899 and 1900. The Peerless Lake and Chipewyan Lake Bands are now in negotiation with the federal government,

¹⁴ ICC report, p. 24

¹⁵ ICC Report, p. 24

but only because they have agreed to negotiate as members of the Bigstone Cree Band who still have outstanding treaty entitlements owing to them.

The Lubicon Lake Cree Nation have been involved in negotiations with the federal and provincial governments for many years. There have been occasions when it appeared that an agreement was within reach, but then something always happened and talks broke down. One of the times when a break-through seemed possible was in November 1984, when the new Conservative Minister of Indian Affairs, David Crombie, arranged to meet with Chief Bernard Ominayak while the minister was meeting with 27 regional chiefs at the Sturgeon Lake reserve. The two met in a storage room where Ominayak handed him a two-page paper entitled "Points for Discussion" which outlined "sixteen headings under which Lubicon land rights might be addressed."¹⁶ Crombie told Ominayak "I think it's time to make a deal" and soon after the meeting named E. Davey Fulton, a retired judge and former Justice Minister, as Special Envoy for the Lubicon. Fulton's "discussion paper," distributed in December 1985, was remarkable in that it outlined an approach to negotiating an agreement which, while not ignoring the differences between the Lubicon and the government positions, would be fair to both parties.

Previous talks had always foundered on terminology, with Ottawa calling the case a "specific claim" based on treaty entitlement and the band calling it a "comprehensive claim" based on aboriginal rights. Fulton viewed the debate as unproductive. He understood that the

¹⁶ Goddard, p. 119

band considered assertion of unextinguished aboriginal rights to be crucial in its quest for a fair settlement. He also understood that neither Ottawa nor Alberta was prepared to recognize unextinguished aboriginal rights in an area covered by treaty. . . To break the impasse, Fulton tried to show that the band was owed a generous settlement under provisions of Treaty Eight and the Natural Resources Act of 1930.¹⁷

Fulton's report recommendations were never implemented. On December 10, 1985, four days after receiving a copy of Fulton's report, the Alberta government announced it had come to an agreement with the federal government to settle the Lubicon case and that there would be no further meetings with Mr. Fulton. Crombie denied any knowledge of such an agreement, but was apparently losing control over his own bureaucracy. He never made the Fulton report recommendations public, and in April 1986 he was reassigned to another cabinet portfolio. He was replaced as Indian Affairs Minister by Bill McKnight. "Reducing (government) commitments and lowering expectations formed the essence of McKnight's Indian policy. He returned Indian Affairs to its old Malcolm McCrimmon pursuits of cutting expenses and promoting assimilation."¹⁸ McKnight named Roger Tasse as the federal negotiator who would deal with Alberta and the Lubicon. Tasse immediately signaled to the band that he was going to take a hard line, beginning with the issue of band membership. The Lubicon include on their membership list people who were cut from the band list by Malcolm McCrimmon and others who are considered non-status. Tasse's position

¹⁷ Goddard, p. 124

¹⁸ Goddard, 160

was that Ottawa would only accept the number of people appearing on the band list approved by the Registrar for Indian Membership.¹⁹

Things were also not positive on the provincial front. Don Getty had succeeded Peter Lougheed as Premier of Alberta without showing any signs of wanting to come to an agreement with the Lubicon. The Lubicon decided that they had to do something to pressure the two levels of government to negotiate, and decided to organize an international boycott of the Calgary Olympic Games in 1988. A feature attraction of the arts festival which was held in conjunction with the Olympics was an international exhibition of Indian artifacts which was to be held at the Glenbow Museum in Calgary.²⁰ The Lubicon wrote to all of the museums that had agreed to contribute artifacts to the exhibit to protest the provincial government and the oil companies' mistreatment of the province's Aboriginal inhabitants. Many museums decided not to participate in the exhibit, and the boycott received a lot of attention internationally and nationally.

Then, two days after the games ended, something unexpected happened. Premier Don Getty abruptly left a cabinet briefing on talks with the Lubicon and went to his office where he phoned Bernard Ominayak to set up a meeting.²¹ The two men met two days later and Getty emerged from the meeting committed to working out a deal that would be satisfactory to the Lubicon. To get talks going between the Lubicon and the

¹⁹ Goddard, p. 140

²⁰ Goddard, p. 143

²¹ Goddard, p. 163

federal government, Getty suggested a three-person mediation tribunal which would mediate issues which the two sides could not agree to. The federal government rejected Getty's proposal for a tribunal and instead filed a suit against Alberta and the Lubicon. Bernard Ominayak felt like the Lubicon were back to square one.

On October 6, 1988 the Lubicon announced that they were asserting their control over their land and would be erecting barricades on the four roads into Lubicon territory as of 1:00 PM on Saturday, October 15, 1988. All vehicles would be stopped and anybody wishing to enter Lubicon territory would have to purchase a permit from the band office.²² Getty opened bilateral talks with the Lubicon to try to prevent the barricades from going up, but the province would not agree to the band's demand for a 95.4 square mile reserve and the talks broke down the night before the deadline.²³ The barricades went up the next day. Chiefs from other bands around the province and supporters from across Canada had come to Little Buffalo to show their support for the Lubicon. A member of the Dutch parliament also came to show support. Getty held a press conference saying the province wouldn't negotiate with people who were breaking the law. Before dawn on Day 6 of the blockade the Mounties raided two of the check-points and arrested 27 protestors.

²² Goddard, p. 171

²³ Goddard, p. 179

As soon as the barricades were down Getty called Bernard Ominayak and asked for talks to resume. Ominayak demanded that the protestors be released before talks could take place. The protestors were arraigned and released. On October 22, 1988 Getty and Ominayak met at a motel in Grimshaw, Alberta. By the end of the day the two men had reached an agreement. The province agreed to give the band a reserve of 95 square miles on two conditions. The first was that the offer of a 95 square mile reserve was not to be tied to band membership as the Alberta government would not agree to recognize a band membership of 478 people. The second was that only seventy-nine square miles would come with sub-surface rights. Ottawa would have to purchase the remaining sixteen square miles from Alberta for the band's use, and the province would retain sub-surface rights.²⁴ Getty and Ominayak announced that they would take the deal to Ottawa for ratification while talks on issues like wildlife management would continue between representatives of the band and the province.

It appeared at last that that the Lubicon would get a fair settlement after waiting for forty-eight years. But it was not to be. After a month of negotiations in Ottawa the federal government tabled a "take it or leave it offer" which did not include compensation for the destruction of the Lubicon economy and for the billions of dollars in resources which had already been

²⁴ Goddard, p. 193

taken from Lubicon land.²⁵ The offer also included only a small amount for economic development, two of the bands' priorities in bargaining. Chief Ominayak rejected the offer and the Lubicon negotiators went home, bitterly disappointed.²⁶

In the almost twenty years since these events, things have gone from bad to worse for the Lubicon people. Within months of the Lubicons' rejection of the federal government's "final offer," federal bureaucrats were working with a dissident group of Indian people, some of whom lived in Little Buffalo and others who did not, looking for a way to use these people to undermine the efforts of the Lubicon leadership to negotiate for more than what the federal government was prepared to offer. First the federal government paid the legal fees of a Calgary-based lawyer who helped this group of dissidents register as Indians. Then, on August 28, 1989, Pierre Cadieux, the Minister of Indian Affairs who replaced Bill McKnight, constituted this group as an official band, calling them the Woodland Cree Band.

Within three years of its creation, the Woodland Cree Band, located just west of Little Buffalo, signed a \$53 million agreement with the federal government. According to Canada, the Woodland Cree land "claim" extinguished Aboriginal title to the lands covered in the deal, including part of the Lubicon traditional territory. . . In 1991, the federal government started negotiations with the Loon River Cree.²⁷

²⁵ Goddard, p. 199

²⁶ Goddard, p. 201

²⁷ Bernard Ominayak with Ed Bianchi, "The Lubicon Cree: Still No Settlement After All These Years," *Nation to Nation: Aboriginal Sovereignty and the Future of Canada*, ed. by John Bird, Lorraine Land, and Murray MacAdam (Toronto: Irwin Publishing, 2002), pp. 168-169

The Loon River Cree Indian Band was recognized by a Ministerial Order dated December 4, 1991. The Loon River Cree Band signed a Treaty Settlement Agreement with the federal government which is dated February 5, 1999. In the agreement, the band "affirm[ed] its adherence to Treaty No. 8 made June 21, 1899" and the federal government agreed that the Band had "unfulfilled entitlements pursuant to the Reserve Land Clause of Treaty No. 8 and the Ancillary Treaty Benefits Clause of Treaty No. 8."²⁸

The creation of the Loon River Cree Indian Band and the negotiation of an adhesion to Treaty 8 with that band was another attempt by the federal government to isolate and weaken the Lubicon Lake Cree Band. Federal officials claimed that 180 Lubicon Band members had defected to the Woodland Lake Cree Band and 80 to the Loon River Cree Band, but the new bands themselves said that the numbers were lower. Nevertheless, the creation of these two new bands had a devastating impact on Lubicon society. Families were divided and many people questioned whether they would ever be able to achieve their goals. Social problems grew worse.

In 1990, the United Nations Committee on Human Rights released a report concern the Lubicon which charged Canada with a human rights violation under the International Covenant on Civil and Political Rights. The report stated that "recent developments threaten the way of life and culture

²⁸ The Loon River Cree Indian Band No. 476 Treaty Settlement Agreement, February 5, 1999.

of the Lubicon Lake Band . . .²⁹ In 1991 the UN Human Rights Committee appointed a rapporteur to monitor the situation of the Lubicon people and report to the committee.

There have been negotiations between the federal government and the Lubicon since 1988 and some progress has been made, but progress is slow and the federal and provincial governments continue to try to undermine the Lubicon leadership's efforts to get a settlement. Oil and gas development licenses continue to be issued to companies which are exploiting Lubicon resources without the permission of the band, and the band is now threatened with the prospect of clear-cut logging on Lubicon land by three neighbouring Indian bands (Whitefish Lake, Woodland and Loon Lake) which have close ties to the Alberta government.³⁰

In the fall of 2003, just as Prime Minister Jean Chretien was leaving office, there was hope once again that an agreement might be within reach, but Chretien left in December before an agreement was reached. Paul Martin became Prime Minister and the federal bargaining team changed. From reports on bargaining to date, the federal government still appears unwilling to give the Lubicon what they want in terms of compensation and economic development. Fred Lennarson says that he thinks that economic development is the main sticking point because the federal government doesn't want the Lubicon to be an economically self-sufficient aboriginal

²⁹ Ominayak and Bianchi, p. 169

³⁰ Ominayak and Bianchi, p. 171

society with "independent capability"³¹ to make its own decisions about its own future. If the federal government gives the Lubicon more than they have been willing to give the other Treaty 8 groups in northern Alberta they might establish a precedent that other groups might want to pursue.

In conclusion, the story of how Treaty 8 was negotiated and how it has been implemented differs in some important respects from earlier treaties. As the first of the northern treaties, Treaty 8 covered a vast territory which was not well known by the Treaty 8 commissioners and which was very difficult to access. Transportation challenges meant that the Treaty 8 Commission of 1899 arrived at its first meeting point eleven days late, meaning that the rest of its negotiations had to be conducted in haste and that some of the people living in the Lesser Slave interior were left out. The commissioners were aware that people had been left out but, again, were more concerned with saving the government money and time than in ensuring that everyone who wanted to be taken into treaty was given the opportunity to meet with the commissioners. At the time that the treaty was negotiated the Indians living in the Treaty 8 area were still able to support themselves from the land, unlike their southern brothers and sisters, and simply wanted to be left alone to hunt, trap, and fish. It was many years before most of them asked to be given reserves.

³¹ From a telephone conversation with Fred Lennarson, Saturday, January 22, 2005

The area covered by Treaty 8 was not wanted for settlement by white farmers like the land to the south of it, but a part of it was found to have significant mineral resources. Negotiations were concentrated in this area to ensure that there would not be any obstacles put in the way of mineral development of the north. There is a significant discrepancy between the territory covered by Treaty 8 negotiations and the area over which the government claimed that aboriginal title had been extinguished. A number of bands in northern Alberta did not sign Treaty 8 and therefore did not surrender their aboriginal title to the land. Oil and gas development in northern Alberta has gone ahead despite this fact, which is why the federal government has gone to some pains to create stories that are not based on historical evidence which purport to show that the people and groups who were left out were all members of bands which had signed Treaty 8.

All of the bands who were left out of Treaty 8 have done what they could to get the best deals they could from governments determined to interpret treaty obligations as narrowly as possible and to minimize the cost of settling outstanding treaty entitlement claims. Our governments still seem to see themselves as representing the interests of white, urban taxpayers rather than the interests of all Canadians, including First Nations. Canadians need to demand that our governments live up to their historic responsibilities to First Nations, perhaps starting with the Lubicon.

Appendix I

Following are Richard Daniel's descriptions of the isolated communities in the Lesser Slave Interior of northern Alberta. These descriptions are taken from his research paper "Land Rights of the Isolated Communities of Northern Alberta," published by Treaty and Aboriginal Rights Research (T.A.R.R.) in January 1975.

Trout Lake and Peerless Lake:

There have been native settlements in the Trout Lake and Peerless Lake area for hundreds of years. Although most of the people are now settled at Trout Lake and Peerless Lake, in the past they also settled on the shores of the many other lakes in the same area, including God's (Manitou) Lake, Long Lake, Esquisetum Lake and Skunk Lake. . .

The Treaty 8 Commission never visited the Trout-Peerless area to negotiate the treaty, however, one person from Trout Lake was paid annuity at Wabasca. A notation in the 1900 Wabasca annuity lists beside the name of Francois Oussey reads: "should be transferred in 1901 to Trout Lake Band." The following year the Trout Lake Band was listed separately, still with only one member, and paid at Wabasca. In subsequent years there was no separate listing for Trout Lake, probably because it was several years before anyone else from the area entered treaty by making the trip to Wabasca. However, this separate listing of the Trout Lake Band in 1901 indicates that at that time the government recognized them as an entity apart from the Bigstone Band.¹

Chipewyan Lake:

(T)he Cree-speaking families whose descendants now live in the community must have arrived several generations ago as the elders are unable to suggest where their ancestors might have lived before migrating to this area, although they do remember that families lived at various points around the lake before most of them gathered on the present site to be near the school and the store. . The elders' stories are supported by the fact that the Hudson's Bay Company had

¹ "Land Rights of the Isolated Communities of Northern Alberta," prepared for the Isolated Communities Advisory Board and the Lubicon Cree Band by Richard Daniel, January 1975, pp. 5-6

a post at Chipewyan Lake as early as 1800, indicating that it must have been a central location for a number of trappers.

When Treaty 8 of 1899 and the adhesion of 1900 were signed, the treaty commission and the Metis scrip commission did not come any closer to Chipewyan Lake than the Wabasca area, and it is therefore not surprising that the people of Chipewyan Lake were not present at the negotiations. However, the Department of Indian Affairs annuity pay lists indicate that in 1901 several people from Chipewyan Lake applied for scrip, were refused and were placed on the lists for the Bigstone Band (Wabasca), instead.²

Sandy Lake:

Sandy Lake has been a community of Metis and Indian people since before Treaty 8 was signed. The lake itself was part of an important fur trade route connecting the Athabasca River and the Wabasca River via Pelican Lake, Sandy Lake and the Wabasca Lakes. Many families would settle at Sandy Lake to fish, and move inland to trap. There are many old abandoned houses at Pelican Lake which some people believe might have been the homes of ancestors of some of the Sandy Lake families. . .

The Treaty 8 and Half Breed Commissions of 1899 crossed Sandy Lake on their way from Pelican Portage to Wabasca and saw ". . . a few half-breed cabins and clearings on the opposite shore," however, no meetings were held there. On the return trip they stopped at the home of one Metis family "at the foot of Sandy Lake."³

Loon Lake:

Interviews with residents of Loon Lake indicate that this community has existed for at least 80 years and probably considerably longer. . .

Apparently, nobody from Loon Lake was taken into treaty in 1899 and 1900 and it is doubtful that anyone received scrip at that time. It was not until 1930 that 15 people from Loon Lake were paid annuities at Whitefish Lake. Then, in 1932, the Indian Agent for the Lesser Slave Lake reported that 125 men, women and children from Loon Lake requested to be taken into treaty. Apparently this request was not acted upon because by 1935 there were only 31 people from Loon Lake listed with the Whitefish Lake Band.⁴

Lubicon Lake (Prairie Lake):

² Daniel, pp. 2-3

³ Daniel, p. 4

⁴ Daniel, p. 7

The Lubicon Lake Band is comprised of people whose ancestors have lived in the vicinity of Lubicon Lake, Little Buffalo and Cadotte Lake for generations. Members of the band at one time received annuity payments at Whitefish Lake and until 1940 were considered by the D.I.A. to be part of the Whitefish Lake Band, but they have resided near Lubicon Lake as long as they can remember. When an Indian Agent asked the Lubicon Lake people to vote in the election of a chief at Whitefish Lake in 1940 he was told that they didn't have any connection with the Whitefish Lake people, and wanted a chief of their own.

The Hudson's Bay Company was operating a post at Prairie Lake in 1899 and at one time there was a Roman Catholic mission, St. Jean l'Evangeliste at Prairie Lake. . . The first indicator on the annuity lists that someone from this area entered treaty was in 1915 when one person from Prairie Lake was entered on the Whitefish Lake Lists. In 1923, 9 more were entered (3 families); in 1926, 3 more and in 1927, 8 more. . . When the Lubicon Lake Band was officially recognized by the D.I.A. in 1940, it included 115 members. To this date the Lubicon Lake Band has not received any reserve land but its members along with many non-treaty people continue to live in the vicinity of Little Buffalo, Cadotte Lake and Lubicon Lake.⁵

⁵ Daniel, p. 8

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