

The Lubicon 13

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Thirteen Lubicons face a variety of charges relating to the raid on the Buchanan logging camp a year ago last November 24th. Another six Lubicons were also allegedly involved and have been called to give evidence but to date haven't been charged.

Until recently neither the Lubicons nor the Alberta Provincial Government were particularly anxious to have the case go to court. The Lubicons weren't particularly anxious for the case to go to court because they have no hope of a fair hearing of their jurisdictional position before the Canadian Courts, and because even arguing unextinguished aboriginal land rights before the Canadian Courts will take years and millions of dollars - - neither of which the Lubicons have. The Alberta Provincial Government hasn't been particularly anxious for the case to go to court either, both because a trial would publicly expose their Storm Trooper investigatory tactics, and because, if they are to maintain any pretence of respect for the rule of law, the charges will almost certainly have to be eventually thrown out over such blatant infringements of human, civil and Constitutional rights as denying the accused access to legal counsel, and dragging people from their homes in the middle of the night and interrogating them in a garbage dump.

Now, however, and concurrent with the Government's major new anti Lubicon propaganda campaign, the legal front is starting to heat up. As with the Government's new anti Lubicon propaganda campaign these legal developments are likely inspired by the increasingly effective effort to block Daishowa from clear cutting Lubicon trees which Daishowa Vice President Tom Hamaoka recently told reporters is threatening all investment in Northern Alberta.

The purpose of heating up the legal front at this time is of course to tie up the Lubicons in court so that they won't be able to concentrate on the Daishowa boycott.

Eight of the formally charged Lubicons were scheduled to appear before a preliminary hearing on December 11, 1991. The remaining five are to appear before a preliminary hearing on April 21, 1992.

On December 9th Lubicon lawyer Bob Sachs asked that the preliminary hearing scheduled for December 11th be adjourned until the new year. He cited three reasons for his request, each of which would normally be considered sufficient grounds for the granting of such an adjournment.

First, Bob Sachs told Provincial Court Judge Richard MacIntosh, he needed the December 11th preliminary hearing put over because he had to prepare documents by December 13th for an important hearing on the case of an Indian man wrongly in jail since 1986 for the alleged murder of an Indian woman. Ordinarily the granting of an adjournment under such circumstances would be simply a matter of professional courtesy. (The case in question, similar to a number of other Indian cases which have recently come to light in Canada, involves police suppression of evidence and threatening the prosecution's key witness with loss of her child if she didn't provide false testimony. Who better to pay for the death of an Indian woman, after all, than an Indian man -- any Indian man. The man has since been released on bail and has been granted another trial.) Secondly, Bob Sachs told Judge MacIntosh, it had not yet been possible to arrange separate Legal-Aid lawyers for each of the thirteen Lubicons charged and six others being called to give evidence -- something necessitated by the Government's insistence on proceeding with the unorthodox, highly questionable and probably unconstitutional approach of calling accused and potentially accused to give evidence against each other. Part of the problem in arranging Legal-Aid lawyers was covering expenses, which at that point Legal-Aid had not agreed to do. (Initially Bob Sachs was to represent all of the Lubicons but the announced intention of the prosecution to call his clients against each other put him in an untenable conflict of interest position.)

And thirdly, Bob Sachs told Judge MacIntosh, the Lubicons had a Constitutional challenge currently before the higher Alberta Court of Appeal regarding the announced intention of the prosecution to call the Lubicons to give evidence against each other. Bob Sachs pointed out to Judge MacIntosh that it only made sense to adjourn the preliminary hearing until the Court of Appeal was able to decide whether the Lubicons actually enjoy the right to remain silent and not incriminate oneself supposedly guaranteed by the Canadian Constitution. (In the type of catch-22 decision the Lubicons have come to expect from the Canadian Courts, a lower court had earlier decided that it

wasn't possible to determine whether such rights were being violated until the Lubicons were called and asked to give evidence against each other.)

Judge MacIntosh denied the application to grant an adjournment until the new year. He instructed Bob Sachs to be prepared to proceed on December 11, in spite of Bob Sachs' very real schedule conflict, in spite of the fact that the Lubicons couldn't all be represented by legal counsel, and in spite of the fact that a superior court hadn't yet been able to rule on whether the Lubicons enjoy the supposedly Constitutionally protected right to remain silent and not incriminate oneself. If under such circumstances the Lubicons asserted their right to remain silent and not incriminate themselves, Judge MacIntosh had the power to jail them for 8 days, after which they would be brought back before the court and again asked to give evidence. If they again asserted their right to remain silent and not incriminate themselves, Judge MacIntosh had the power to send them back to jail for another 8 days and so on for as long as it took to either coerce them into giving evidence against each other, or until Judge MacIntosh tired of exercising the tyrannical powers small time Provincial Judges enjoy under such circumstances. O Canada.

On Wednesday, December 11th, Lubicon aboriginal rights lawyer Jim O'Reilly informed Judge MacIntosh that he would be representing the first Lubicon being called "with respect to the specific issues of jurisdiction, sovereignty, fiduciary responsibility and aboriginal rights". He asked for time to make some preliminary arguments. Judge MacIntosh granted Jim O'Reilly until the following Tuesday to make preliminary arguments. On the following Tuesday, Judge MacIntosh said, he would start hearing evidence on the so-called "criminal" charges.

Between December 11th and the following Tuesday Lubicon civil liberties lawyer Howard Rubin prepared an application "to compel the Crown or Legal- Aid to pay transportation, accommodation and legal fees for the 19 lawyers required to provide legal counsel given the prosecution's stated intention to call accused and potentially accused against each other". Shortly before Howard Rubin moved to file his application Legal-Aid agreed to pay the involved expenses.

The following week prosecution lawyers proposed to put off proceeding with the so-called "criminal" charges until the new year if the eight Lubicons then before the court agreed to waive their right to a preliminary hearing. The purpose of a preliminary hearing is of course to determine whether there's sufficient evidence to go to court on the charges. Based on legal advice the eight Lubicons then before the court agreed to waive their right to a preliminary hearing in exchange for having the case put over to next year. They are now scheduled to be arraigned on January 7th and to go to trial sometime in the fall, following completion of all of the necessary preparatory things such as jury selection.

The other five Lubicons scheduled to appear before a preliminary hearing on April 21st will undoubtedly face a similar scenario. The end result of all of this legal manoeuvring is a kind of trade-off in which the Government will be able to keep the Lubicons before the courts for some time without having to argue their Storm Trooper investigatory tactics, and the Lubicons will at least have a little breathing room, some legal resources and time to prepare.

Enclosed for your information are copies of a couple of related newspaper articles.

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JUDGE REFUSED TO DELAY HEARING

A preliminary hearing is scheduled to begin this morning in Alberta provincial court in Peace River in which the accused will be without a lawyer and his co-accused will be called to testify against him. Reinie Jobin, one of 13 Lubicon Indians charged in the destruction of logging equipment on disputed land, was ordered Monday by provincial judge Richard McIntosh to appear for the start of the preliminary hearing even though Mr. Jobin's lawyer, Robert Sachs, asked for a delay.

Mr. Sachs asked for a postponement on the grounds that the order for co- accused to testify against each other is still before the Alberta Appeal Court and the Indians have been unable to find 13 legal aid lawyers to represent them.

Mr. Sachs, who had been representing the 13, told the court that the prosecution's decision to require co-accused to testify against each other would put him in a conflict of interest if he represented any of them.

The 13 Indians were charged a year ago with arson, mischief and wearing a disguise at a logging camp that had been cutting timber in an area that is at the centre of a land claims dispute. The

Lubicon Indians have been trying for more than a decade for a settlement to their claim. In July, the Indians appealed a Court of Queen's Bench ruling that co- accused would be required to testify against each other.

Last night, Mr. Sachs said he went to court on Monday to seek an adjournment but Judge McIntosh denied his request and ordered the preliminary hearing to proceed today. He said that although the Alberta Court of Queen's Bench ruled that co- accused could be compelled to testify against each other, an Ontario court ruled otherwise on the same issue and that decision never was appealed.

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LUBICONS BYPASS HEARING PEACE RIVER (CP) –

Eight of 13 Lubicon Indians charged with arson have waived their right to a preliminary hearing. They were charged after a logging camp in northwestern Alberta was torched last year. The eight are to appear in Peace River Court of Queen's Bench on Jan. 7 to have their trial dates set. They have elected to be tried by judge and jury.

A preliminary hearing for five others charged in the incident was scheduled for April 21. The accused, who are part of the Lubicon Lake band that claims sovereignty on the land, will continue to challenge the jurisdiction of the court and whether the Canadian Criminal Code is applicable in this case, said their lawyer, James O'Reilly.

Charges were laid after about \$20,000 worth of equipment at the Buchanan Lumber logging camp near the Lubicon community of Little Buffalo was set ablaze in November 1990. The camp is on land claimed by the Lubicon band. The Cree band has accused Daishowa, through its subcontractors, of logging in the disputed area. Daishowa has said it will not cut timber in the area this winter. Daishowa Canada Ltd. operates a pulp mill in Peace River about 485 km northwest of Edmonton.