

The Provinces



Prairies

Tom Flanagan

Tactics of the Lubicon

LUBICON Lake sits in north-central Alberta, in the area ceded by the Indians of Northern Alberta to Canada by Treaty 8. The treaty commissions that visited this vast wilderness in 1899 and 1900 inevitably missed some Indians in remote locations. A few of these later joined the Whitefish Lake band, and then, in the 1930s, asked for a separate reserve at Lubicon Lake, closer, they said, to where they were accustomed to living.

Their request was approved in principle in 1940, but the reserve was never surveyed, because of fiscal shortfalls during the Second World War and the complexities of legal jurisdiction subsequent to the Natural Resources Transfer Agreement of 1930. The delay was not the Lubicon's fault, and it didn't matter much for 30 years. They continued to live as they always had, by hunting, fishing and trapping, until in the 1970s the oil and gas industry moved into the area, interfering with their traditional way of life. Now it became essential to obtain a reserve and settle down.

Influenced by the native activism of the 1970s, they escalated their claim from treaty entitlement, which Alberta and Canada had always accepted in principle, to aboriginal rights. They depicted themselves as possessing unextinguished aboriginal title to their "traditional lands" (almost 26,000 square kilometres) and therefore entitled to negotiate a "comprehensive claim" with the federal government.

They claimed they still had title to a large tract of unsurrendered land in the middle of the Treaty 8 area, like a hole in a doughnut. The federal government could not accept this claim, which contradicts the wording of Treaty 8, without upsetting the whole treaty system in the western provinces. (Treaty 8 required the bands that signed to jointly give up their interest in all of Northern Alberta.)

Hence the impasse, one that has never been broken.

immediately if they would accept the legal framework of Treaty 8, as several nearby bands in similar circumstances have done. Neither the provincial nor the federal government wants to deprive them of the treaty benefits to which they are entitled. If they think Treaty 8 should not apply to them, they can have recourse to the judicial process. But perhaps realizing that their legal theory is novel and shaky, they have been unwilling to test it in court.

Instead, they have pursued political strategies inspired by Saul Alinsky, the legendary American community organizer. (Fred Lennarson, political adviser to the Lubicon, is a disciple of Alinsky.) In his book *Rules for Radicals*, Alinsky advocated "mass jujitsu," which he defined as "utilizing the power of one part of the power structure against another part."

In practice, mass jujitsu means inflicting damage on third or even more remote parties, hoping they will influence your true adversary to make concessions at the negotiating table. Thus, the Lubicon tried but failed to get an injunction to block all resource development in the area. Later, in an unsuccessful effort to make the federal government negotiate on their terms, they sought to disrupt the 1988 Calgary Winter Olympics, urging museums around the world not to lend aboriginal artifacts to Calgary's Glenbow Museum for an Olympic exhibition.

Lubicon supporters also picketed the Olympic cross-country torch relay because it was sponsored by Petro-Canada, which had resource properties in the area claimed by the Lubicon. Their project for the 1990s has been an elaborate secondary boycott designed to make paper-products company Daishowa a corporate hostage. Daishowa's timber-cutting licence for its Peace River mill overlaps the Lubicon aboriginal claim. Even though Daishowa agreed voluntarily to put off logging in that area, the Friends of the Lubicon threatened to picket and boycott Daishowa's customers unless they stopped buying paper products from the company.

This is an unusually long chain of causation, even by the inclusive standards of secondary boycotts: threaten to harm Daishowa's customers in order to reduce Daishowa's business, in order to get Daishowa to pressure the Alberta government to pressure the federal government to come to the table. Too bad if the strategy causes layoffs at the Peace River mill, but that might even increase the pressure on the Alberta government.

Secondary boycotts are generally illegal in collective bargaining. Not surprisingly (Alinsky was an icon of 1960s radicals), they are reminiscent of sixties-style political fanaticism: If you're not part of the solution, you're part of the problem.

It will be regrettable if Mr. Justice James MacPherson's recent Ontario court decision in the Daishowa case — he threw out Daishowa's bid to block the boycott — has the effect of legitimizing secondary boycotts under the heading of free speech. They are much more than speech; they are an attempt to inflict economic harm on innocent third parties. The law should confine conflicts, not encourage them to spread throughout the society.