

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	May 23, 2014	D É P O S É
Nicholas Young		
Ottawa, ON	16	

SCT File No.: SCT-6003-13

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

Driftpile First Nation #450

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

Respondent

**APPLICATION BY SUCKER CREEK FIRST NATION FOR PARTY STATUS
OR, ALTERNATIVELY, INTERVENOR STATUS**
Pursuant to Sections 24 and 25 of the *Specific Claims Tribunal Act* and Rules
34 and 45 of the *Specific Claims Tribunal Rules of Practice and Procedure*

This Application is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

DATED the 23rd day of May, 2014.

Nicholas Young
(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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AND TO: DRIFTPILE FIRST NATION #450

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I. Applicant

1. The Applicant, Sucker Creek First Nation ("SCFN"), confirms that it is a First Nation within the meaning of paragraph (a) of the definition of "First Nation" in section 2 of the *Specific Claims Tribunal Act*, SC 2008, c. 22 (the "Act").
2. SCFN received a Notice dated February 18, 2014 issued by the Specific Claims Tribunal (the "Tribunal") pursuant to section 22 of the *Act* and Rules 49(1)(e) and 49(2)(g) of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119 (the "Rules") in respect of SCT File No. SCT-6003-13 (the "Driftpile Claim") and makes the within application pursuant to sections 24 and 25 of the *Act*.
3. In making this application, SCFN also relies on section 22 of the *Act* and Rules 2, 29, 30, 34 and 45 of the *Rules*.

II. Relief Sought

4. SCFN seeks to apply before the Tribunal at a time and place to be determined by the Tribunal for the following relief:
 - a. an Order granting SCFN status as a party-claimant in the Driftpile Claim; or
 - b. alternatively, an Order granting SCFN intervenor status in the Driftpile Claim.

III. Grounds for the Application

5. On June 21, 1899, SCFN, as one of a group of First Nation communities in the Lesser Slave Lake region of Alberta who had selected Chief Kinoosayo as their spokesman, entered into Treaty 8 with Her Majesty the Queen in right of Canada ("Canada"). The other First Nation communities included the predecessors of the present-day Driftpile, Swan River, Sawridge and Kapawe'no First Nations.
6. Canada ratified Treaty 8 by Order in Council on February 20, 1900.
7. Treaty 8 includes the following provision relating to ammunition and twine:

FURTHER, Her Majesty agrees that ... such Bands as prefer to continue hunting and fishing, [shall receive] as much ammunition and twine for making nets annually as will amount in value to one dollar per head of families so engaged in hunting and fishing....

(the "Ammunition and Twine Benefits").

8. The economies of the Treaty 8 First Nations at the time of treaty were grounded in hunting, trapping, and fishing, both for subsistence and for commercial purposes with respect to participation in the fur trade economy.
9. The Ammunition and Twine Benefits were meant to outfit the Indians of Treaty 8 who preferred to engage in hunting and fishing for their livelihood and were an essential treaty promise to the signatories of Treaty 8.
10. The entire population of Treaty Indians around Lesser Slave Lake was initially listed on a single annuity pay list administered under the *Indian Act*. However, in 1899, Canada approved the appointment of separate leaders for the various communities around Lesser Slave Lake.
11. Canada conducted a survey of reserve land for the Indians at Sucker Creek in 1901, at which time 11,955.2 acres of land were set aside as Sucker Creek Indian Reserve No. 150A. This reserve was confirmed by Order in Council P.C. 1 dated January 8, 1904, subject to a discrepancy between the acreage set forth in the survey and the acreage set forth in the Order in Council.
12. In 1910, five separate annuity pay sheets were created and used: one list for each of the four communities of Driftpile, Swan River, Sawridge and Sucker Creek, and one for the residents at Indian Reserves 150B, 150C and 150D (currently the Kapawe'no First Nation) and a number of other individuals.
13. A further survey in 1912 led to an additional 3,244.6 acres of land being added to the reserve. The addition was confirmed by Order in Council P.C. 2144 dated August 30, 1913 as subsequently amended by Order in Council P.C. 2530 dated October 8, 1913.

14. In 1929, Canada began to administer the five groups separately. The current Driftpile, Swan River, Sawridge and Sucker Creek First Nations were recognized as having their own Chiefs and Councils, control over their individual Reserves, and wholly distinct trust fund accounts.

The SCFN Specific Claim

15. SCFN submitted a claim for Ammunition and Twine Benefits to the Specific Claims Branch on or about December 8, 2000. This claim was placed in abeyance while SCFN pursued the matter and other claims through litigation in Alberta Court of Queen's Bench Action No. 9603-06439 and in Federal Court Action Nos. T-219-13 and T-221-13, so the claim did not proceed further in the specific claims process. SCFN discontinued Alberta Court of Queen's Bench Action No. 9603-06439 on October 22, 2013 and Federal Court Action Nos. T-219-13 and T-221-13 on November 18, 2013 in respect of, *inter alia*, the Ammunition and Twine Benefits.
16. SCFN submits that it has a valid claim against Canada for Ammunition and Twine Benefits for reasons including but not limited to the following:
 - a. Canada failed to discharge or fulfil its legal and fiduciary obligations with respect to the provision of Ammunition and Twine Benefits pursuant to the terms of Treaty 8 from 1899 to 1952;
 - b. any ammunition and twine which Canada provided to SCFN as relief for sick and destitute Indians was in addition to, and separate from, Canada's obligation to provide Ammunition and Twine Benefits pursuant to Treaty 8 for the purpose of ensuring a livelihood to the recipients;
 - c. Canada failed to establish and maintain records of the distribution of Ammunition and Twine Benefits pursuant to the terms of Treaty 8;
 - d. Canada utilized the trading companies operating in the Treaty 8 area to distribute relief supplies to the Indians, and then condoned or failed to take action to prevent abuses that Canada knew resulted from the trading companies' control over this distribution;
 - e. Canada failed to provide Ammunition and Twine Benefits in accordance with the First Nations' understanding of the promise made by Canada in that regard during the negotiation of Treaty 8; and

- f. Canada failed to increase the Ammunition and Twine Benefits from the amount stated in Treaty 8 in a manner consistent with the Treaty promise that the Ammunition and Twine Benefits were intended to ensure that the recipients could earn a living from hunting, fishing and trapping.

The Driftpile Claim

17. On September 18, 2013, Driftpile First Nation #450 (the "Claimant") filed a Declaration of Claim pursuant to Rule 41 of the *Rules* seeking the following relief in relation to the Ammunition and Twine Benefits of Treaty 8 for the years 1899 to 1952 on the grounds that Canada failed to honour the provisions of Treaty 8, and thereby breached its fiduciary obligations at common law:
 - a. damages for the failure to provide Ammunition and Twine Benefits from 1899 to 1952;
 - b. compensation for breach of Canada's treaty, trust, fiduciary and equitable duties;
 - c. interest;
 - d. costs; and
 - e. other such damages or compensation as the Tribunal deems just.
18. On December 20, 2013, Canada filed a Response denying the allegations contained in the Declaration of Claim and seeking dismissal of the claim with costs.
19. On February 21, 2014, the Tribunal served SCFN with notice pursuant to section 22 of the *Specific Claims Tribunal Act* that a decision in these proceedings may, in the opinion of the Tribunal, significantly affect the legal interests of SCFN, Swan River First Nation, Kapawe'no First Nation and Sawridge First Nation as alleged successors of the former Kinoosayo Band, under Treaty 8.
20. Section 24 of the *Specific Claims Tribunal Act* states the following:
 - 24.** The Tribunal may, on application by a First Nation to whom notice under subsection 22(1) is provided, grant the First Nation party status if the Tribunal considers it a necessary or proper party.

21. SCFN submits that party-claimant status is appropriate because it will permit a full, final and effective adjudication of all the issues without delay, inconvenience or the expense of separate proceedings, and there would be no prejudice to Canada if SCFN is added as a party-claimant in these proceedings.
22. Adding SCFN as a party-claimant in these proceedings will secure the just, timely, and cost-effective resolution of this specific claim for Ammunition and Twine Benefits under Treaty 8, for reasons which include, but are not limited to, the following:
 - a. SCFN and the Claimant share common history as it relates to the negotiation of Ammunition and Twine Benefits pursuant to Treaty 8;
 - b. SCFN and the Claimant share common history as it relates to the involvement of Canada and trading companies in the distribution, or lack of distribution, of Ammunition and Twine Benefits to them from 1899 to 1929;
 - c. SCFN and the Claimant both claim for Ammunition and Twine Benefits for the period 1899 to 1952;
 - d. SCFN and the Claimant both claim for Ammunition and Twine Benefits based on similar, if not identical, grounds; and
 - e. Canada has defended the Driftpile Claim in part by asserting that Ammunition and Twine Benefits provided to Chief Kinoosayo's Band discharged Canada's obligation to provide Ammunition and Twine Benefits to Chief Kinoosayo's Band and to the successor bands of Chief Kinoosayo's Band, of which SCFN is one such successor band.
23. By virtue of the shared history of the Claimant and SCFN with respect to the provision of Ammunition and Twine Benefits from 1899 to 1952, and in view of Canada's defences to the Driftpile Claim, SCFN has a direct interest in the subject matter and outcome of these proceedings and is, accordingly, a necessary and proper party to these proceedings.
24. In particular, any decision of the Tribunal with respect to the provision of Ammunition and Twine Benefits to the communities around Lesser Slave Lake during the years 1899 to 1952 will have a direct impact on the interests of SCFN.

25. Alternatively, if the Tribunal finds that SCFN is not a necessary or proper party to the Driftpile Claim, then SCFN requests that the Tribunal grant it status as an intervenor in these proceedings.

26. Section 25 of the *Specific Claims Tribunal Act* states the following:

25(1) A First Nation or person to whom notice under subsection 22(1) is provided may, with leave of the Tribunal, intervene before it, to make representations relevant to the proceedings in respect of any matter that affects the First Nation or person.

(2) In exercising its discretion under subsection (1), the Tribunal shall consider all relevant factors, including the effect that granting intervenor status would have on the cost and length of the hearing.

27. SCFN submits that, for the reasons set forth herein, SCFN is directly affected by the decisions of the Tribunal in these proceedings and ought to have an opportunity to make representation to the Tribunal.

28. Intervention by SCFN would provide a different, relevant, and useful perspective which would assist the Tribunal to resolve the issues in these proceedings.

29. SCFN submits that any increase in the length and cost of the Driftpile Claim associated with granting intervenor status to SCFN would be modest and, in all the circumstances, should not be a barrier to SCFN making submissions on a matter which so significantly affects SCFN interests.

IV. Consent to Relief Sought

30. As of the date of filing of this application, neither the Claimant nor the Respondent has consented to SCFN's application for status as a party or, alternatively, as an intervenor in these proceedings.

V. Proposed Manner to Participate

31. If SCFN is granted status as either a party or an intervenor, SCFN intends to present evidence and legal arguments.

32. SCFN is in possession of historical documents and evidence relevant to the issues in the Driftpile Claim and could provide assistance to the Tribunal in deciding the issues in these proceedings.

VI. Intention to Support

33. SCFN intends to support the Claimant's position regarding Canada's breach of its Treaty and fiduciary obligations to provide Ammunition and Twine Benefits to the beneficiaries of Treaty 8.

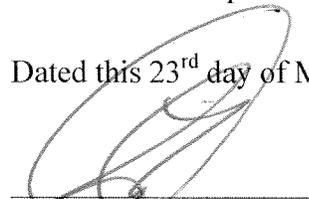
VII. Language to be Used

34. SCFN intends to use the English language in these proceedings.

VIII. Costs

35. SCFN requests that its application be granted without costs.

Dated this 23rd day of May, 2014.



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