

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

Driftpile First Nation #450

|  |                |                            |
|--|----------------|----------------------------|
| SPECIFIC CLAIMS TRIBUNAL                     |                |                            |
| TRIBUNAL DES REVENDICATIONS<br>PARTICULIÈRES |                |                            |
| F<br>I<br>L<br>E<br>D                        | April 16, 2014 | D<br>E<br>P<br>O<br>S<br>É |
| Amy Clark                                    |                |                            |
| Ottawa, ON                                   | 12             |                            |

Claimant

v.

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

Respondent

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**APPLICATION BY SAWRIDGE 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*

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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 16<sup>th</sup> day of April, 2014

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(Registry Officer)

**TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
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**AND TO: DRIFTPILE FIRST NATION #450**

As represented by Christopher Devlin, Caitlin Mason, and Tim Watson

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**I. Applicant (Act, ss. 24 or 25)**

1. The Applicant, Sawridge First Nation ("SFN"), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22.

**II. Relief Sought (R. 34(a))**

2. An application will be made on behalf of SFN before the Specific Claims Tribunal (the "Tribunal") at a time and place to be determined by the Tribunal, for the following relief:
  - a. An Order granting SFN party-claimant status in these proceedings; or,
  - b. Alternatively, an Order granting SFN intervenor status in these proceedings.

**III. Grounds for the Application (R. 34(b))**

3. On June 21, 1899, SFN, from the Lesser Slave Lake region of Alberta, entered into Treaty No. 8 with the Crown, which was ratified by Order in Council on February 20, 1900.
4. SFN, along with the Driftpile, Swan River, Sucker Creek, and Kapawe'no First Nations, appointed Chief Kinosayoo as a spokesman at the time of the negotiation of Treaty No. 8.
5. Ammunition and Twine Benefits were of essential significance to the signatories of Treaty No. 8.
6. The economies of the Treaty No. 8 First Nations at the time of treaty were dominated by the pursuits of hunting, trapping, and fishing, both for subsistence and for commercial purposes with respect to participation in the fur trade economy.
7. The Ammunition and Twine Benefits provided for by Treaty No. 8 were meant to outfit the Indians who preferred to engage in hunting and fishing for both subsistence and commercial purposes.

8. The written text of Treaty No. 8 expressly provides for Ammunition and Twine Benefits as follows:

FURTHER, Her Majesty agrees that...for such Bands as prefer to continue hunting and fishing, 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.

9. 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 recognition of the fact that the Indians were separate Bands within the region, the Crown approved the appointment of separate leaders in 1899.
10. 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, 150 C, and 150D (currently the Kapawe'no First Nation), and a number of other individuals.
11. In 1929, the Crown 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. A total of 5396.7 acres has been surveyed for the SFN (2263 acres as Indian Reserve No. 150G and 3133.7 acres as Indian Reserve No. 150H).
12. SFN submitted claims for Ammunition and Twine Benefits for the period 1899 to 1952 under the *Specific Claims Tribunal Act*, which claims were received by the Minister of Indian and Northern Affairs Canada on December 10, 2009 and January 17, 2012, respectively. Neither claim was ultimately filed with the Minister, so neither claim proceeded further in the specific claims process.
13. The grounds on which SFN intended, and continues to intend, to claim against the Crown for Ammunition and Twine Benefits under the *Specific Claims Tribunal Act* were, and are, as follows:

- a. the Crown failed to discharge or fulfil its legal and fiduciary obligations with respect to the Ammunition and Twine Benefits of Treaty No. 8 from 1899 to 1952;
  - b. any ammunition and twine which the Crown provided to SFN as relief for sick and destitute Indians was in addition to, and separate from, the Crown's obligation to provide Ammunition and Twine Benefits pursuant to Treaty No. 8;
  - c. the Crown failed to establish and maintain records of the distribution of Ammunition and Twine Benefits pursuant to the terms of Treaty No. 8;
  - d. the Crown utilized the trading companies operating in the Treaty No. 8 area to distribute relief supplies to the Indians, and then acquiesced and failed to take action to reduce the scope of these trading companies' control over matters essential to the survival of the Indians and to prevent the abuses the Crown knew resulted directly from this control;
  - e. failing to provide Ammunition and Twine Benefits in accordance with the First Nations' understanding of the promise made by the Crown in that regard during the negotiation of Treaty No. 8; and
  - f. failing to increase the Ammunition and Twine Benefits at an indexed rate.
14. On September 18, 2013, the Claimant, Driftpile First Nation #450, filed a Declaration of Claim pursuant to Rule 41 of the *Specific Claims Tribunal Rules of Practice and Procedure*, seeking relief in relation to the Ammunition and Twine Benefits of Treaty No. 8 for the years 1899 to 1952 on the grounds that the Crown breached its legal obligation under a treaty between the Claimant and the Crown, as well as its fiduciary obligations at common law, by:
- a. failing to provide Ammunition and Twine Benefits to the Claimant from 1899 to 1952;
  - b. managing records and distributing the Ammunition and Twine Benefits in a negligent manner;

- c. failing to increase the Ammunition and Twine Benefits at an indexed rate;
  - d. providing intermittent supplies of ammunition and twine to local trading posts as relief to sick and destitute Indians; and
  - e. acquiescing to the distribution of relief supplies, including ammunition and twine, by local trading companies and failing to take action to prevent abusive practices in the provision of relief to Indians.
15. On December 20, 2013, the Crown filed a Response denying the allegations contained in the Declaration of Claim and seeking dismissal of the claim with costs.
  16. On February 24, 2014, the Tribunal served SFN 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 SFN, as alleged successors of the former Kinoosayo Band, under Treaty No. 8.
  17. Section 24 of the *Specific Claims Tribunal Act* states the following:

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.
  18. The Tribunal has interpreted section 24 broadly to allow the addition of a claimant to an existing claim in circumstances where it is reasonable and appropriate to do so.
  19. Claimant status is the only status that would enable 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 the Crown if SFN is added as a claimant in these proceedings.
  20. Adding SFN as a claimant in these proceedings will secure the just, timely, and cost-effective resolution of this specific claim for Ammunition and Twine Benefits under Treaty No. 8, for reasons which include, but are not limited to, the following:

- a. SFN and the Claimant share some common history as it relates to the negotiation of Ammunition and Twine Benefits as part of Treaty No. 8;
  - b. SFN and the Claimant share some common history as it relates to the Crown's and trading companies' distribution, or lack thereof, of Ammunition and Twine Benefits to them from 1899 to 1929, during which time the Crown administered the Driftpile, Swan River, Sawridge, Sucker Creek, and Kapawe'no First Nations as one for the purposes of Ammunition and Twine Benefits and relief provisions;
  - c. SFN and the Claimant both claim for Ammunition and Twine Benefits for the period 1899 to 1952; and
  - d. SFN and the Claimant both claim for Ammunition and Twine Benefits based on similar, if not identical, grounds.
21. SFN has a direct interest in the subject matter and outcome of these proceedings, because SFN claims that the Crown has breached its legal and fiduciary obligations in relation to the Ammunition and Twine Benefits of Treaty No. 8. As such, SFN is a necessary and proper party to these proceedings.
  22. SFN has a direct interest in the subject matter of these proceedings. The subject matter is the Crown's legal obligations in relation to Ammunition and Twine Benefits owed to SFN under Treaty No. 8 and the Crown's fiduciary obligations arising therefrom for the period 1899 to 1952. SFN has a direct interest in the Crown's legal obligations toward SFN in relation to Ammunition and Twine Benefits for the period 1899 to 1952.
  23. Alternatively, if the Tribunal finds that SFN is not a necessary or proper party to these proceedings, then SFN requests that the Tribunal grant it status as an intervenor in these proceedings.
  24. Section 25 of the *Specific Claims Tribunal Act* states the following:

- (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.

25. For the reasons discussed above in paragraphs 21 and 22, SFN is directly affected by the decisions of the Tribunal in these proceedings.
26. The intervention by SFN would provide a different, relevant, and useful perspective which would assist the Tribunal to resolve the issues in these proceedings.
27. SFN relies on sections 22, 24, and 25 of the *Specific Claims Tribunal Act* and Rules 2, 29, 30, 34 and 45 of the *Specific Claims Tribunal Rules of Practice and Procedure*.

#### **IV. Consent to Relief Sought (R. 34(b))**

28. Neither the Claimant nor the Respondent has consented to SFN's application for party or, alternatively, intervenor status as at the date of filing of this application.

#### **V. Proposed Manner to Participate (R. 45(b))**

29. If SFN is granted party or, alternatively, intervenor status, then SFN intends to present evidence and legal arguments.

#### **VI. How Participation Could Assist Tribunal (R. 45(b))**

30. SFN is in possession of historical documents and evidence relevant to the issues in these proceedings and could provide assistance to the Tribunal in deciding the issues in these proceedings.



**VII. Intention to Support (R. 45(c))**

31. SFN intends to support the Claimant's position regarding the Crown's breach of its fiduciary obligation and its obligation to provide Ammunition and Twine Benefits to the beneficiaries of Treaty No. 8.


**VIII. Language to be Used (R. 45(d))**

32. SFN intends to use the English language in these proceedings.

**IX. Costs**

33. SFN requests that its application be granted, without costs.

Dated this 16<sup>th</sup> day of April, 2014.



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