

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
April 22, 2014	
Nicholas Young	
Ottawa, ON	14

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 SWAN RIVER 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 22nd day of April, 2014

Nicholas Young

(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

As represented by Cynthia J. Dickins and Linda Fleury

Department of Justice Canada

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AND TO: DRIFTPILE FIRST NATION #450

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I. Applicant

1. The Applicant, Swan River First Nation (“SRFN”) confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (the “Act”).
2. SRFN is in receipt of a Notice from the Specific Claims Tribunal (the “Tribunal”) issued pursuant to s. 22 of the *Act* and makes the within application pursuant to ss. 24 and 25 of the *Act*.
3. In making this application, SRFN also relies on s. 22 of the *Act* and Rules 2, 30, 34, and 45 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR 2011-119.

II. Relief Sought

4. SRFN seeks to make application before the Tribunal at a time and place to be determined by the Tribunal for the following relief:
 - a. An Order granting SRFN status as a claimant party in these proceedings, SCT File No.: SCT 6003-13, (the “Driftpile Claim”); or
 - b. In the alternative, an Order granting SRFN status as an intervenor in the Driftpile Claim.

III. Grounds for the Application

Historical Background

5. On June 21, 1899, SRFN adhered to Treaty 8 as part of Chief Keenooshayoo’s Band which was comprised of a large group of First Nation communities around Lesser Slave Lake.
6. The text of Treaty 8 expressly provided for ammunition and twine as follows:

...and 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 the families so engaged in hunting and fishing.

(the "Ammunition and Twine Benefits")

7. The economies of the Treaty 8 First Nations at the time of treaty were grounded in hunting, fishing and trapping.
8. The Ammunition and Twine Benefits were meant to outfit Treaty 8 adherents who engaged in hunting and fishing for their livelihood and were an essential treaty promise to the signatories of Treaty 8.
9. The members of Treaty 8 who adhered as part of Chief Keenooshayoo's Band were 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.
10. In 1910, five separate annuity pay sheets were created: one list for each of the four communities of Driftpile, Swan River, Sawridge and Sucker Creek and one for the residents of Indian Reserves 150B, 150 C and 150 D (the Kapawe'no First Nation) and a number of other individuals.
11. A survey of lands for families resident at Swan River was completed in 1912.
12. By Privy Council Orders issued in 1922 and 1925, 11,228 acres of reserve land were set aside for SRFN.
13. By 1929, the Crown had begun to administer the five groups separately. The 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 SRFN Specific Claim

14. SRFN filed a claim with the Specific Claims Branch in October 2008, alleging an outstanding lawful obligation by the Crown for failing to provide Ammunition and Twine Benefits pursuant to Treaty 8 for the period from 1899 to 1952.
15. The claim was accepted for negotiation in part on July 25, 2011. No negotiations ever took place and the claim remains outstanding.
16. The SRFN maintains it has a valid claim against the Crown for Ammunition and Twine Benefits for reasons including but not limited to:
 - a. Canada failed to discharge or fulfill 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 SRFN as relief for the sick and destitute was in addition to and separate from Canada's obligation to provide Ammunition and Twine Benefits pursuant to the terms of Treaty 8 for the purpose of ensuring a livelihood to the recipients;
 - c. Canada failed to establish and maintain adequate 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 and then condoned or failed to take action to prevent abuses which 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 in that regard during the negotiation of Treaty 8;
 - f. Canada failed to increase the Ammunition and Twine Benefits from the amount stated in Treaty 8 (\$1.00 per head of family) 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. The Driftpile Claim was filed with the Tribunal on September 18, 2013, seeking:
 - a. Damages for the failure by Canada 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 in the Declaration of Claim and seeking dismissal of the claim with costs.

19. Canada has defended the Driftpile Claim, in part, by asserting that Ammunition and Twine Benefits provided to Chief Keenooshayoo's Band discharged Canada's obligation to provide Ammunition and Twine Benefits to the successor Bands and SRFN is a successor Band.

20. On February 21, 2014, the Tribunal served SRFN with notice pursuant to s. 22 of the *Act* that a decision in these proceedings may, in the opinion of the Tribunal, significantly affect the legal interests of SRFN.

21. Section 24 of the *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.

22. The SRFN respectfully submits that Claimant status is appropriate because it will permit a full, final and effective adjudication of all the issues in the Driftpile Claim without delay or inconvenience and further, that there is no prejudice to Canada to adding SRFN as a claimant party in the Driftpile Claim.

23. Adding the SRFN as a claimant in the Driftpile Claim will ensure just, timely and cost-effective resolution of this specific claim for Ammunition and Twine Benefits for reasons including but not limited to the following:
- a. SRFN and the Claimant share common history as it relates to the negotiation of Ammunition and Twine Benefits pursuant to Treaty 8;
 - b. SRFN and the Claimant share common history with respect to Canada's and the trading companies' involvement in the distribution or lack of distribution of ammunition and twine between 1899 and 1929;
 - c. SRFN and the Claimant both claim for Ammunition and Twine Benefits for the period 1899 to 1952;
 - d. Claims for Ammunition and Twine Benefits by SRFN and the Claimant are based on similar grounds;
 - e. SRFN has a valid claim for Ammunition and Twine Benefits pursuant to the *Act*; and
 - f. Canada has raised as a defence to the Driftpile Claim the assertion that providing Ammunition and Twine Benefits to Chief Keenooshayoo's Band has discharged Canada's obligation to the successor bands, including SRFN.
24. By virtue of the shared history of the Claimant and SRFN with respect to the provision of Ammunition and Twine Benefits during the period from 1899 to 1952, and in view of the Respondent's defences to the Driftpile Claim, the SRFN has a direct interest in the subject matter and outcome of these proceedings and is, accordingly, a proper party to these proceedings.
25. 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 1929 will have a direct impact on the interests of the SRFN.

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

27. Section 25 of the *Act* states that:

(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.

28. The SRFN submits that for the reasons set out herein, the SRFN is directly affected by the decisions of the Tribunal in these proceedings and ought to have an opportunity to make representations to the Tribunal.

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

IV. Consent to Relief Sought

30. Neither the Claimant nor the Respondent has consented to SRFN's application for status as a party or, alternatively, as an intervenor in these proceedings.

V. Proposed Manner to Participate and How Participation Could Assist the Tribunal

31. If SRFN is granted status as either a party or an intervenor, the SRFN would propose presenting documentary evidence, expert evidence and legal arguments.

32. The SRFN is in possession of historical documents which relate to the issues in the Driftpile Claim and which could assist the Tribunal in adjudication of the issues in these proceedings.

VI. Intention to Support

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

VII. Language to be Used

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

VIII. Costs

35. SRFN requests that this application be granted, without costs to any party.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF APRIL, 2014.

Counsel for the Applicant



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