

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

Driftpile First Nation #450

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES <b>September 18, 2013</b> Guillaume Phaneuf	D E P O S E
Ottawa, ON	<b>1</b>	

Claimant

v.

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

Respondent

---

**DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
*Specific Claims Tribunal Rules of Practice and Procedure*

---

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

**DATED** the 18<sup>th</sup> day of September, 2013.

Guillaume Phaneuf

(Registry Officer)

**TO:** Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building  
234 Wellington Street, East Tower  
Ottawa, Ontario K1A 0H8  
Fax: (613) 954-1920

**I. Claimant (R. 41(a))**

1. The Claimant, Driftpile First Nation #450 (“DFN”) confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

**II. Conditions Precedent (R. 41(c))**

2. The following condition precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, has been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister notified the Claimant in writing of his decision not to negotiate the claim, in whole or in part;

3. On or about January 24, 2001, DFN filed a claim according to Canada’s Specific Claim Policy, asserting that the Crown breached its legal and fiduciary duties by failing to provide ammunition and twine provisions to DFN for 53 consecutive fiscal years from 1899 to 1952, pursuant to the provisions of Treaty No. 8.

(the “Claim”)

4. On or about July 25, 2011, the Crown accepted negotiation of the Claim in respect to its outstanding lawful obligation with regard to the provision of ammunition and twine for the following eight fiscal years only:

- a. 1899/1900;
- b. 1904/05;
- c. 1905/06;
- d. 1906/07;
- e. 1908/09;
- f. 1909/1910;
- g. 1910/1911; and
- h. 1911/12.

5. On or about July 25, 2011, the Crown rejected portions of the Claim, including the following assertions of DFN:
  - (a) the Crown's outstanding lawful obligation to DFN with regard to the provision of ammunition and twine for the fiscal years 1900/01 to 1903/04, 1907/08 and 1912/13 to 1952;
  - (b) the Crown's provision of ammunition and twine pursuant to Treaty No. 8 as distinct obligation from the provision of ammunition and twine as relief;
  - (c) the Crown's failure to maintain proper records and accounts with regard to the expenditure and distribution of ammunition and twine provisions to DFN;
  - (d) the Crown's failure to determine how many DFN members were eligible for ammunition and twine benefits pursuant to Treaty No. 8;
  - (e) the Crown's failure to prevent abuse by trading companies contracted to provide supplies and relief to Indians in the Treaty No. 8 area, pursuant to the Crown's fiduciary obligations to DFN; and
  - (f) the Crown's failure to provide ammunition and twine pursuant to Treaty No. 8 at a rate sufficient to support the ability to obtain an moderate livelihood from hunting, fishing, and trapping, at a rate increased over time to reflect inflation.
6. The Crown's refusal to accept any obligations regarding the provision of ammunition and twine to DFN for the years as set out in paragraphs 4 and 5, provides DFN with the grounds to file a claim with the Specific Claims Tribunal pursuant to s.16(1)(a) of the *Specific Claims Tribunal Act*.
7. DFN has not resolved any part of its claim regarding the ammunition and twine provisions of Treaty No. 8 for the years spanning 1899 to 1952.

**III. Claim Limit (Act, s. 20(1)(b))**

8. For the purposes of this claim, DFN does not seek compensation in excess of \$150 million.

**IV. Grounds (Act, s. 14(1))**

9. The following are the grounds for the specific claim, as provided for in s. 14 (a) of the *Specific Claims Tribunal Act*:

- (a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

**V. Allegations of Fact (R. 41(e))**

Treaty 8

10. On June 21, 1899, DFN adhered to Treaty No. 8 as part of the Kinoosayo Band, comprising what are now the successor Indian bands of Driftpile, Swan River, Sucker Creek, Sawridge, and Kapawe'no First Nations (the "Kinoosayo First Nations").

11. Treaty No. 8 provides that treaty beneficiaries who wish to continue hunting and fishing are guaranteed "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")

Administration of DFN

12. The Driftpile Indian Reserve No. 150 was first surveyed in 1901 and comprised a total of 13,504 acres. An additional 2460 acres were surveyed in 1912, to account for those that did not receive land previously, for a total of 15,964 acres.

13. Until 1910, Canada listed the Kinoosayo First Nations on a single payroll.

14. In or around 1910, the Crown created a separate annuity paylist for DFN, independent from the other Kinoosayo First Nations.
15. In or around 1929, DFN obtained a separate chief and council, control of its reserve and a distinct trust account.

#### Administration of Ammunition and Twine Provisions

16. From 1899 to 1952, the Crown, at its discretion, provided intermittent supplies of ammunition and twine to local trading posts as relief to sick and destitute Indians.
17. Trading companies provided with Crown relief supplies regularly inflated prices and used relief accounts to collect debts from Indians, rather than distributing relief supplies to those who were sick and destitute.
18. The Crown acquiesced to the distribution of relief supplies by the trading companies and failed to take action to prevent abusive practices in the provision of relief to Indians.
19. Crown records lack detail and rarely indicated whether any portion of the ammunition and twine provided by the Crown as relief was distributed to DFN.
20. Sometime in or around 1952, the Crown came to recognize a distinction between distribution of Ammunition and Twine Benefits, and ammunition and twine provisions for the purposes of relief.

#### The Crown's Failure to Provide Ammunition and Twine Benefits

21. From 1899 to 1952, the Crown failed to provide DFN with Ammunition and Twine Benefits pursuant to its obligations under Treaty No. 8.
22. From 1899 to 1960, the Crown did not maintain distribution procedures or accounts with respect to the provision of Ammunition and Twine Benefits, unlike the distribution of annuities pursuant to the terms of Treaty No. 8 and the provision of relief to Indians.

23. DFN was dependent on the good faith and honour of the Crown with respect to receiving, to the fullest extent allowable under the terms of Treaty No. 8 and Crown policy, its entitlement to Ammunition and Twine Benefits.

**VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:**

24. DFN submits that the Crown failed to honour the provisions of Treaty No. 8 thereby breaching the Crown's fiduciary obligations at common law by:
- (a) failing to provide Ammunition and Twine Benefits from 1899 to 1952;
  - (b) managing records and distributing the Ammunition and Twine Benefits in a negligent manner; and
  - (c) failing to increase Ammunition and Twine Benefits at an indexed rate.
25. The ammunition and twine provisions of Treaty No. 8 required annual disbursement to all treaty beneficiaries, regardless of need.
26. DFN submits that the Crown's provision of relief supplies within the Treaty No. 8 area were made in accordance with an existing policy of relief based on dire need and was distinct from the Crown's obligations under Treaty No. 8.
27. In the alternative, if relief supplies were a fulfillment or partial fulfillment of Treaty No. 8, the manner and quantity of the Ammunition and Twine Benefits provided to DFN were insufficient to extinguish the Crown's lawful obligations.
28. The obligation to provide DFN with Ammunition and Twine Benefits was a solemn promise made by the Crown under terms of Treaty No. 8.
29. The honour of the Crown required that the Crown take a broad, purposive approach to the interpretation of its promise to provide Ammunition and Twine Benefits to DFN and act with diligence in pursuit of its obligations.

30. The Crown's conduct showed a pattern of persistent errors, indifference, and negligence that frustrated the purpose of Crown's promise to provide Ammunition and Twine Benefits to DFN, thereby breaching the honour of the Crown.

**VII. Relief Sought**

31. DFN seeks compensation for the Crown's failure to provide ammunition and twine according to the terms of Treaty No. 8, including compensation for:

- (a) damages for the failure to provide Ammunition and Twine Benefits from 1899 to 1952;
- (b) compensation for breach of treaty, trust, fiduciary and equitable duties;
- (c) interest;
- (d) costs; and
- (e) other such damages or compensation as this honourable Tribunal deems just.

DATED this 18<sup>th</sup> day of September, 2013.



**Christopher Devlin**

Counsel for the Claimant Driftpile First Nation  
Devlin Gailus Barristers and Solicitors  
Suite C-100, Nootka Court  
633 Courtney Street  
Victoria, BC V8W 1B9  
Telephone: (250)361-9469  
Fax: (250)361-9429  
christopher@devlingailus.com



**Tim Watson**

Counsel for the Claimant Driftpile First Nation  
Devlin Gailus Barristers and Solicitors  
Suite C-100, Nootka Court  
633 Courtney Street  
Victoria, BC V8W 1B9  
Telephone: (250)361-9469  
Fax: (250)361-9429  
timw@devlingailus.com