

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 20, 2013	D E P O S É
Amy Clark		
Ottawa, ON	5	

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

RESPONSE

**Pursuant to Rule 42 of the
*Specific Claims Tribunal Rules of Practice and Procedure***

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

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I. Status of Claim (R. 42(a))

1. The Claimant, The Driftpile First Nation # 450 (“First Nation”), which is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act* (“Act”), submitted a claim to the Minister of Indian Affairs and Northern Development (“Minister”), asserting that the First Nation did not receive any ammunition and twine from 1899 – 1952, to which it was entitled pursuant to the terms of Treaty 8 (“Original Claim”).
2. The Original Claim was submitted in or about January 2001.
3. The Original Claim has not been resolved by a final settlement agreement.

II. Validity of Claim (R. 42(b) and (c))

4. The First Nation alleges that Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (“Crown”) has failed to provide ammunition and twine to the First Nation from 1899 to 1952, pursuant to Treaty 8 (“Claimed Benefits”).
5. For the purposes of its Declaration of Claim SCT-6003-13 filed on September 18, 2013, (“Claim”), the First Nation relies on s. 14(1)(a) of the *Act*:
 - a. a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or other agreement between the First Nation and the Crown;
6. The Crown does not accept, and specifically denies, the validity of the allegations set out in the First Nation’s Claim.
7. Further, the Crown does not admit that it failed to provide the First Nation with the Claimed Benefits or that the First Nation has suffered any damages. The Crown has

fully discharged any Treaty 8 ammunition and twine obligations that may be owed to the First Nation in that the First Nation has received its full complement of ammunition and twine benefits as set out in Treaty 8.

8. Further, in the alternative, if the Tribunal should find the First Nation's Claim to be valid, paragraphs 20(1)(b) and (c) of the *Act* provide a basis for the Tribunal to award compensation in respect of the First Nation's Claim. None of sections 20(1)(e) to (h) of the *Act* apply.

III. Allegations of Fact – Declaration of Claim R. 41(e): Acceptance, denial or no knowledge (R. 42(d))

9. Unless expressly admitted or accepted in this Response, the Crown denies the facts alleged in the Claim.
10. The Crown admits that the First Nation is a First Nation within the meaning of the *Act*, as pleaded in paragraph 1 of the First Nation's Claim.
11. The Crown states that communications between the Crown and the First Nation in furtherance of achieving a settlement of the Original Claim are protected by settlement privilege. This includes the contents of a letter dated July 25, 2011, referenced in paragraphs 4, 5 and 6 of the Claim. These paragraphs are therefore inadmissible and should not be considered in determining this Claim.
12. The Crown admits the facts set out in paragraphs 10, 11, 12 and 13 of the Claim.
13. In response to paragraph 14, the Crown admits only that in 1910, separate annuity pay lists were created in accordance with the residential locations of the various groups of Indians of Chief Kinoosayo's Band. It was not the First Nation which was assigned a separate annuity pay list (as the First Nation did not yet formally exist), but rather the group living on Driftpile River Reserve No. 150.

14. In response to paragraph 15, the Crown admits only that the First Nation elected their first Chief and Council in 1929.
15. In response to paragraphs 16-22 of the Claim, and in response to the Claim as a whole, the Crown specifically denies that the Claimed Benefits were only provided as relief and that trading companies were responsible for providing relief to this First Nation. The Crown further states that from 1899 to 1952, the provision of the Claimed Benefits to Chief Kinoosayo's Band discharged the Crown's obligation to provide the Claimed Benefits to Chief Kinoosayo's Band and also discharged the Crown's obligation to provide the Claimed Benefits to the successor Bands of Chief Kinoosayo's Band, including the First Nation.
16. In response to paragraph 23 of the Claim, the statement is not an allegation of fact, rather it constitutes legal argument.

IV. Statements of Fact (R. 42(a))

17. Treaty 8 was made and concluded in 1899. The text of Treaty 8 sets out accurately the Claimed Benefits to which Chief Kinoosayo's Band was entitled:

... 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.
18. Prior to the signing of Treaty 8, the Crown was aware of and considered the provision of a small annual issue of net twine and ammunition to the Indians in the Treaty 8 territory, including members of Chief Kinoosayo's Band.
19. At the time of the signing of Treaty 8, the Crown was aware of and understood the importance of the provision in the treaty under which ammunition and twine was to be provided.

20. In 1910, for reasons of administrative convenience, the Indian Agent at Lesser Slave Lake Agency placed the Indians of Chief Kinoosayo's Band on separate paylists organized in accordance with the residential locations of each component group of Chief Kinoosayo's Band. Departmental officials agreed with the proposal, subject to the caveat that the "different fragments cannot be recognized as separate Bands".
21. From 1899 to 1928, the Crown was aware of and provided the Claimed Benefits to Chief Kinoosayo's Band. From 1929 to 1952, the Crown was aware of and provided the Claimed Benefits to the First Nation.
22. The Crown states that Treaty 8 promises ammunition and twine for making nets annually on the basis of \$1.00 per head of the family for those families engaged in hunting and fishing as opposed to farming and ranching. The Crown further states that in Northern Alberta, ammunition and twine were provided on a regular basis both as relief and to meet treaty obligations.
23. Relief was provided to sick and destitute Indians including the old people who were unable to work and dependent on charity. Relief included rations such as bacon, lard, flour, tea and tobacco. As relief, ammunition and twine was to be given only in small amounts and only to those who were able to make use of it.
24. By as early as 1908 when the Lesser Slave Lake Agency was established, which included the First Nation, the Indian Agent was responsible for distributing ammunition and twine, not the trading companies.
25. Alternatively or additionally, the Crown has fulfilled its obligations pursuant to Treaty 8 in that the First Nation was continually supplied with ammunition and twine during the relevant time periods, often in amounts in excess of the \$1.00 amount stipulated in Treaty 8.

V. Relief Sought by the Crown (R. 42(f))

26. The Crown seeks to have the claim dismissed in its entirety.

27. The Crown seeks its costs in the proceedings.

28. Such further relief as this Honourable Tribunal deems just.

VI. Communication R.42(g))

The Respondent's email addresses for service of documents are:

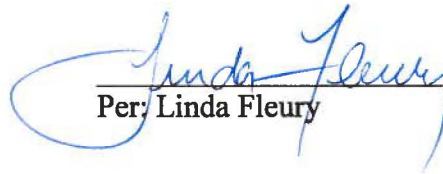
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Dated this 20th day of December, 2013.

William F. Pentney
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