



Robinson Huron Treaty LITIGATION FUND

Atikameksheng
Anishnawbek

Aundeck Omni
Kaning

Batchewana
First Nation

Dokis First Nation

Henvey Inlet
First Nation

M'Chigeeng
First Nation

Magnetawan
First Nation

Mississauga
First Nation

Nipissing
First Nation

Ojibways of
Garden River

Sagamok
Anishnawbek

Serpent River
First Nation

Shawanaga
First Nation

Sheguiandah
First Nation

Shesheganing
First Nation

Thessalon
First Nation

Wahnapiitae
First Nation

Wasauksing
First Nation

Whitefish River
First Nation

Wiikwemkoong
Unceded Territory

Zhiibaahaasing
First Nation

For immediate release:

July 26, 2024

Supreme Court of Canada Release Decision Regarding Ontario's Appeal of Robinson Huron Treaty Annuities (*Restoule*) Case

Robinson Huron Treaty Territory – Today, the Supreme Court of Canada (SCC) released its decision in the *Restoule* case regarding Ontario's appeal of Stage 1 and 2 of the Robinson Treaties annuity cases. The Robinson Huron Treaty Litigation Fund (RHTLF) is very happy with the decision, which vindicates the essential position taken by the RHTLF throughout this litigation:

- The Court confirmed that the Robinson Huron Treaty is an alliance of equals. It is a nation-to-nation relationship based on mutual interdependence.
- The Treaty contains a sacred promise to share the wealth of the territory in accordance with Anishinaabe legal principles of reciprocity, respect, responsibility and renewal.
- The Court confirmed the obligation of the government to work with the Anishinaabe to implement the Treaty and held that the Court can order a remedy if there is no agreement between the parties.
- Although the SCC allowed Ontario's appeal in part, finding a role for Crown discretion in the implementation of the Treaty promise, it soundly rejected Ontario's suggestion that the discretion to be exercised under the Treaty was unreviewable – rather a court can assess whether decisions about annuity increases are consistent with the honour of the Crown.



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- The RHTLF settled the past compensation component of their annuity claim under the Robinson Huron Treaty in January of 2024, for \$10.0 B, half of which has been paid by Ontario and half of which has been paid by Canada. It is the largest treaty settlement in the history of the country and the SCC decision does not affect that settlement agreement.
- The SCC recognized and reaffirmed that the Robinson Huron Treaty is a nation-to-nation agreement according to which the Crown and the Anishinaabe came to terms regarding their future coexistence within the Treaty territory. Under the Treaty, the parties agreed to share the land and resource wealth in a way that would enable them to sustain both the Anishinaabe and the newcomers going forward.
- The SCC also affirmed that the annuity augmentation promise is a constitutionally protected right under s.35 of the *Constitution Act, 1982*. Moreover, like all treaty rights, the entitlement to annuities is a collective right intended to sustain the Anishinaabe First Nation communities going forward, and through the communities, entitlement to annuities also benefits community members.
- The SCC also agreed that the Anishinaabe were entitled to a remedy, after 160 years of the Crown's failure to fulfill their treaty promise to augment the annuity. The Court based the entitlement to relief on the principle of the honour of the Crown and the duty of diligent implementation.
- The SCC did allow part of Ontario's appeal regarding Crown discretion over augmenting the annuity. Essentially the SCC said that the obligation of the Crown is to consider whether the economic conditions allow the Crown to increase the annuity without incurring loss and by how much through honourable engagement with the treaty partners. The SCC noted that the outcome could be subject to review by a court, otherwise the Anishinaabe would be forced to continue to rely on a historically dishonourable treaty partner.



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- The RHTLF, welcomed the importance and usefulness of the declaratory relief for the go-forward negotiations. The settlement agreement for past compensation signed with Ontario and Canada in January 2024 already commits the parties to implement the augmentation promise going forward. The Crown still only pays \$4.00 per person per year, which will have to change. The parties to the settlement agreement also accept Anishinaabe principles of respect, responsibility, reciprocity and renewal. The declaration will provide further impetus and guidance for the go-forward negotiations.

Background Information on the *Restoule* Case:

The Robinson Treaties – the Robinson Huron Treaty (RHT) and the Robinson Superior Treaty (RST) – were entered into with the British Crown in 1850 at Bawaating (Sault Ste. Marie). The Robinson Huron Treaty Litigation Fund (RHTLF) is a Trust established by the 21 Lake Huron First Nations to pursue the RHT Annuities Claim. The 21 First Nations together are successors to the Anishinaabe that entered into the RHT, which covers the territory north of Lake Huron.

In 1850, the treaty annuity under the RHT was approximately \$1.60 per person. At the time, the value of the Treaty territory was unknown, and the Province of Canada did not have the financial means to pay a higher annuity. So, William Benjamin Robinson, on behalf of the Crown, and the Anishinaabe Chiefs of Lake Huron, agreed to an augmentation clause that obligated the Crown to increase the annuity in the future if the Crown was able to do so without incurring a loss. The Crown increased the annuity only once in 1875 to the current level of \$4.00 per person even though Billions of dollars have been generated from resource development in the territory.

The RHTLF launched the Annuity Claim in Ontario Superior Court in 2014. Stage 1 of the RHT case was heard together with the RST case in 2017 and 2018. Stage 1 dealt with whether the augmentation promise was an enforceable obligation. Stage 2 which



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was heard in 2019, dealt with crown defences of limitation and Crown immunity. The trial judge, Justice Hennessy, ruled in favour of the Anishinaabe in both stages 1 and 2. Justice Hennessy released her Stage 1 decision in 2018 and the Stage 2 decision in 2020. Ontario appealed to the Ontario Court of Appeal, which largely upheld the decisions of the trial judge.

Ontario further appealed to the SCC. Canada did not appeal.

Quotes:

Spokesperson Duke Peltier said: “As a result of the SCC decision today which partially acknowledge some level of Crown discretion regarding Annuities Augmentation, it is important to note that the RHT leadership were wise to negotiate a settlement agreement regarding past compensation in the face of the uncertainty of the outcome of the Ontario appeal to the SCC.”

Chief Angus Toulouse said: “The SCC decision is a balanced result. The decision highlights the need for Canada and Ontario to reach a fair settlement with RHT First Nations for the implementation of the annuities augmentation clause of the RHT going forward. The Robinson Huron Treaty leadership call upon Prime Minister Trudeau and Premier Ford to honour the commitment included in the past compensation settlement agreement to renew the Treaty Relationship and as well as the commitment by Canada and Ontario to fulfill the treaty promises of the Crown relating to the annuities augmentation clause for the future.”

Chief Patsy Corbiere added: “For over 20 years the Supreme Court of Canada has been stating that reconciliation is a key imperative embodied in section 35 of the *Constitution Act, 1982*, which affirms aboriginal and treaty rights. The honourable course of action for Canada and Ontario is to work with us to achieve a negotiated settlement and not delay the inevitable that the Crown made a commitment to the Robinson-Huron Treaty Anishinaabek and the law requires the Crown to live up to their legal obligations.”



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For questions or more information, contact media@emdagency.ca