

ROBINSON HURON TREATY LITIGATION FUND

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Atikameksheng
Anishnawbek

Aundeck Omni
Kaning

Batchewana

Dokis

Garden River

Henvey Inlet

Magnetawan

M'Chigeeng

Mississauga #8

Nipissing

Sagamok
Anishnawbek

Serpent River

Shawanaga

Sheguiandah

Shesheganing

Thessalon

Wahnapiatae

Wasauksing

Whitefish River

Wikwemikong
Unceded Indian
Reserve

Zhiibaahaasing

PRESS RELEASE

ROBINSON HURON TREATY LEADERS AND BENEFICIARIES RECEIVE ANOTHER FAVOURABLE JUDGEMENT IN THE ROBINSON HURON TREATY ANNUITIES CASE

June 26, 2020, Sudbury, ON – Eighteen months after the release of the phase one decision regarding the Robinson-Huron Treaty annuity case, Madam Justice Hennessy released her decision concerning Phase 2 of the case. Justice Hennessy again encourages settlement:

“Everyone would agree that resolution in this case is a laudable goal and one that must be encouraged at every stage of the litigation.”

“Resolution and reconciliation have been our objective from day one when we initiated the lawsuit almost 6 years ago” said Chief Duke Peltier. The encouragement for settlement was clearly expressed by Justice Hennessy in the Phase 1 decision.

I find that the Crown has a mandatory and reviewable obligation to increase the Treaties' annuities when the economic circumstances warrant. The economic circumstances will trigger an increase to the annuities if the net Crown resource-based revenues permit the Crown to increase the annuities without incurring a loss. The principle of the honour of the Crown and the doctrine of fiduciary duty impose on the Crown the obligation to diligently implement the Treaties' promise to achieve their purpose (i.e. of reflecting the value of the territories in the annuities) and other related justiciable duties.

and

The Anishinaabe and the Crown now have an opportunity to determine what role those historic promises will play in shaping their modern treaty relationship. The pressures they faced in 1850 will continue to challenge them. However, in 1850 the Crown and the Anishinaabe shared a vision that the Anishinaabe and the settler society could continue to co-exist in a mutually respectful and beneficial relationship going into the future. Today, we arrive at that point in the relationship again. It is therefore incumbent on the parties to renew their treaty relationship now and in the future.

The action was brought against the Crown in right of Canada and the Crown in right of Ontario regarding the Crown's failure to honour promises made in their longstanding Treaty relationship with the Lake Huron Anishinabe that dates back to the Royal

Proclamation of 1763. The action alleges that the Crown has breached the Treaty promise by the Crown to increase the annual annuities paid to the Treaty beneficiaries which currently amount to \$4.00 annually.

In the Phase 2 decision, the judge points out that our people have been denied the benefits from the Treaty that our ancestors achieved in the Treaty provisions,” said Chief Dean Sayers. Justice Hennessy points out:

This century old dispute between the federal and provincial Crowns is one of the reasons why no increase has been made to the annuities for over 150 years. This delay has had enormous negative consequences for the plaintiffs, not the least of which is the cost and complications of litigating this dispute based on two centuries of evidence. It is the stage on which this dispute plays out.

Chief Sayers added “We are resilient. We remember the promises the Crown made to us. The Treaty is in force in perpetuity.”

In the Phase 2 hearings the defendants put forth technical arguments of Crown Immunity and statute of limitations as barring the plaintiffs from getting relief from the court. In both instances, the judge rejected the defendants’ positions mostly based on mischaracterizing the nature of the Treaty and the relationship set out in the Treaty:

In Stage One, this court found that the Treaty promises created fiduciary obligations within the context of a sui generis fiduciary relationship. ... The breach of the promises in the Robinson Huron and Robinson Superior Treaties cannot be considered in the broad and simple concept of a “wrong.” The claims allege breaches of express promises on which the signatory First Nations relied when they entered the Treaties.

....

The Treaties represent unique agreements by the Crown and the First Nations of the Lake Huron Territory and the Lake Superior Territory whose long-term goal was peaceful and respectful co-existence in a shared territory. Treaties are part of the constitutional fabric of this country. Simple contracts they are not. The Robinson Treaties did not start out as contracts nor did they somehow transform into contracts for the purpose of a statutory limitations defense.

The case will continue on to Phase 3 to deal with the issue of compensation. The case will also be heard in the Ontario Court of Appeal based on Ontario’s appeal of the Phase 1 decision. The federal government did not join in the appeal. The Lake Huron Leadership is again requesting the Government of Ontario to abandon their appeal and for Prime Minister Trudeau and Premier Ford to do the honourable thing and start good faith negotiations and not use covid-19 as an excuse to continue to do nothing.

For more information, contact: Robinson-Huron Treaty Trust Chairman: Mike Restoule: 705-498-7353, rhtrust@outlook.com; or Chief Duke Peltier 705-919-3871, dukepeltier@wiikwemkoong.ca; or Chief Dean Sayers, chiefdeansayers@batchewana.ca;