



THE RHT LEGAL TEAM:

Dave Nahwegahbow, Dianne Corbiere and Roger Jones have been managing the Robinson Huron Treaty Annuity Case along with the Litigation Management Committee of the Robinson Huron Treaty Litigation Fund (RHT Trust).

Also, on the legal team are: Joseph Arvay, QC and Catherine Boies-Parker, QC from Arvay Finlay; Don Worme, QC from Semaganis Worme, and Nahwegahbow, Corbiere Associates Scott Robertson, Chris Albinati and Jim Ratis.

Robinson Huron Treaty Waawiindaamaagewin

The Lake Huron First Nation leadership developed the “RHT Litigation Fund (Trust)” to pursue the Annuities Claim.

The positive relationship amongst our 21 First Nations that emerged from working together on the annuity case resulted in a commitment to work together to build a new legal entity: known as the “Robinson Huron Treaty Waawiindaamaagewin” (RHW), to continue the relationship on a broader scale.

The RHW is working in support of the RHT Trust, but is a separate legal entity from the RHT Trust.



From L to R: Angus Toulouse (RHT Trustee), and Two Named Plaintiffs in the RHT Annuities case Mike Restoule (also RHT Trustee Chair) and Roger Daybutch

The Robinson Huron Treaty Annuity Case Community Bulletin is published by the Robinson Huron Treaty Litigation Fund and is intended as a space for communicating important updates to the Robinson Huron Treaty beneficiaries about the ongoing representative litigation and efforts at settlement relating to the Robinson Huron Treaty Annuity Action (Restoule et al v Canada et al) currently before the Ontario Superior Court of Justice. While the contents of this Bulletin deals with legal matters, it is not legal advice nor is it intended as a news publication. For more information visit our website at www.rht1850.ca

ROBINSON HURON TREATY ANNUITY CASE

SPECIAL EDITION COMMUNITY BULLETIN

SPECIAL EDITION: Stage 2 and 3 - & Appeals



A closing pipe ceremony and travelling song by Elder Leroy Bennett. Court staff and Justice Hennessy, Legal Counsel, Elders, Fire Keepers, and Community Members pose for a “team photo” in front of Sacred Fire/Teepee.

(Photo Credit: Catherine Murton Stoehr; shared with permission)

CASE CHRONOLOGY

Stage 1: Recap, Update & ON Appeal

Ontario is doing everything it can to resist the Stage One Decision of Justice Hennessy. Undoubtedly, it's because Ontario has made a lot of money from the resources in the RHT Territory and it doesn't want to have to share any of that money. Nor does it want to pay any past compensation for what it has failed to pay in the past. Since the last time the annuity was increased to \$4.00 in 1875, Ontario has never disclosed how much money it has made from the RHT Territory.

Ontario has done two things to contest the Stage 1 Decision:

1) Ontario Motion for Fresh Evidence and to Re-open the Stage 1:

Ontario launched a motion to try and reopen the Stage One trial even though Stage One was over. Its lawyers were arguing that they have uncovered new evidence that might have changed the outcome of the Decision. They lost this motion and are not appealing. See decision: <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc5329/2019onsc5329.html?resultIndex=7>

2) Ontario Appeals Stage 1 Decision

Ontario is appealing the Stage One Decision, saying that Justice Hennessy erred in her interpretation of the treaty augmentation clause. Canada has not appealed the Stage One Decision. The dates for the appeal are now finalized: January 11-14 and 18-21, 2021 in Toronto or virtually if the pandemic is still here. We will update the communities well in advance of the dates to organize community activities.



"The Ontario Superior Court in Stage 1 has given equal weight to the Anishinaabe perspective in interpreting the 1850 Robinson Huron Treaty, particularly the augmentation clause and also gave force to the principles of respect, responsibility, reciprocity and renewal which ought to enlighten our Treaty relationship going forward. I simply want to emphasize our willingness to vigorously pursue all phases of the litigation but the preference is to negotiate true reconciliation with the Crown."

Ogimaa Duke Peltier

Chiefs continue to pursue Negotiations



The Anishnawbek ceremonies since the beginning of time still echo into the future endeavors of the Anishnawbek. The ceremonies are past, present and future. The ceremonies have been important part of the Robinson Huron Treaty Annuities Case, not only as support but, also a teaching tool to all those involved. This promotes understanding and clarity as to who the Anishnawbek of the 1850 Robinson Huron Treaty are. Relying on our ceremonies, sacred bundles, connection to our ancestors, the land, we pray for guidance and support throughout this court case in all stages.

In considering negotiations, we were also comforted by the judge's decision that if there are no negotiations, she said that these matters can be determined as a matter of law. She encouraged us to negotiate in her Stage 2 decision as well. Our people have waited long enough for a resolution to this case and we will keep up the fight in the courts." – Chief Dean Sayers.

Bearing Witness: Reflections from Elders & Community Members from the Stage Two Hearings

Ashley Nootchtai (Atikameksheng Anishinawbek)

"Aanii, my name is Ashley Nootchtai, I am a single mother of two daughters aged 11 and 13, a graduate from a Paralegal Program, and a member of Atikameksheng Anishinawbek."

"The one thing that struck a chord for me was when I first saw the Judge go for a break and she had carefully carried the sacred eagle feather in a beautiful casing with her. This respectful act alone restored my trust, confidence, and hope for justice. Later on that day I was informed that The Honourable Justice Henessey also erected one of the poles for the teepee and sacred fire. These acts moved me in a way I had not anticipated and for that I am grateful and say Miigwetch."

Elder Leroy Bennett (Sagamok Anishinawbek)

"Ahnee my name is Leroy Bennett from the Community of Sagamok Anishnawbek. The second phase of the Court Case is a testament to the will and knowledge of the Anishnawbek of the Robinson Huron Treaty. We are taking our rightful place in history as the Anishnawbek Nation among other Nations. We are in a foreign arena, but with faith in our Anishnawbek ways, the agreements and understanding shall come to light for the world to know."



Back Row from L to R: _____, Leroy Bennett, Art Pehtagoose, Joyce Tabobondung, Dora Tabobondung, Martha Charbonneau and Maryjoyce Clayden
Front Row from L to R: Cheryl Recollet, Gail Shabonquit, Sharon Wabegijig, Lila Tabobondung

Dolores Naponse (Atikameksheng Anishnawbek)

"I realize after being in the ceremony in the teepee that I am part of history like my ancestors. I am here today to be part of this like my ancestor Shabogeshig was at the signing. I would like to see a positive outcome soon because Anishinabek people have struggled for a long time. I am glad that our Anishinabe culture is a part of the court proceedings. Our first nations are all connected."

Cheryl Recollet (Wahnapiatae First Nation)

Researcher/Facilitator for the RHW "I am very fortunate to have been able to attend the RHT Annuities Phase 2 proceedings for the past 2 weeks. I really enjoyed being in the courtroom and listening to the evidence being presented. It helped to further my understanding of our treaty relationships and provided a historical perspective that I was unaware of. I think it is important for our people to understand how our treaty began and to help contribute to where it is going. I was very happy to see many elders and community members attending the trial and showing their support for the treaty understanding. I also liked watching the dynamics of the courtroom, the logistics, the procedures and seeing how the legal teams interacted and presented themselves in the courtroom. I was very honoured by the Judge and how she would confirm what messages she was hearing from legal counsel."

Stage 3: Confirmed and the Dates are set for April 2021 and June 2021

Stage 3 is in the process of being organized and legal teams are preparing for the hearing in April 2021 and June 2021 in Sudbury with a week in a nearby Lake Huron First Nation community. More information will be provided in the coming months.

In Stage 2 Justice Hennessy confirmed that our arguments related to which Crown should pay must be addressed in Stage 3. She did not find against our arguments, just that they are better addressed in Stage 3.

Now that the Stage 2 decision confirmed the Crown is liable back to 1850, we are better prepared for the issues to be addressed in Stage 3 regarding the compensation owed to the First Nations.

This will be the final Stage, subject to potential appeals for Stage 2 and 3. However, the First Nations will be pushing for the settlement of this case at every stage.

We encourage our citizens to attend this Stage of the case and the Appeal

Stage 2: Crown Liable Back to 1850

Stage 2: Overview

In Stage Two, the Court was asked to answer the following questions:

- Who is liable to pay the full amount of any compensation owed to the Anishinaabek Plaintiffs?
- Are any of the Anishinaabek Plaintiffs' claims against Ontario barred by the application of a statutory limitation or Crown immunity?

The hearing took place in Sudbury between October 15-25.

Result: We Won Stage 2!

On June 26, 2020, 18 months after releasing the Stage 1 decision, Madam Justice Hennessy released her Stage 2 decision.

As in the Stage 1 decision, Justice Hennessy again encouraged 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," said Justice Hennessy.

Upon hearing about the decision, Chief Duke Peltier said, "Resolution and reconciliation have been our objective from day one when we initiated the lawsuit almost 6 years ago."

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

In Stage 2, Ontario sought to limit how far back it could be liable for Crown breaches of the Treaty and fiduciary duty. It advanced technical arguments of Crown immunity and statutory limitations based on mischaracterizing the nature of the Treaty, and the relationship that it set out as a contract.

In her decision, Justice Hennessy flatly rejected these arguments:

"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."

Moving on, Stage 3 will deal with the issue of compensation going all the way back to 1850. Work is well underway by the RHT Legal Team in preparation for this next important stage.

Meanwhile, Ontario's appeal of Stage 1 is set to be heard in the Ontario Court of Appeal in January 2021. Canada did not appeal and will appear as a respondent.

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 to not use the COVID-19 pandemic as an excuse to delay good faith negotiations.