

# ROBINSON HURON TREATY LITIGATION FUND

c/o Chairperson, Mike Restoule

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## MEDIA ADVISORY

**December 24, 2018**

**Sudbury, ON** – Madam Justice Hennessey issued her decision regarding the Robinson-Huron Treaty, 1850 case.

At issue, is the annuity clause contained within the treaty. In 1850, Chiefs agreed to share Lands and Resources with the newcomers and in return, the Crown was to pay annuities which were to be increased throughout the years. The Treaty states that the annuities would increase if the resource revenue generated from the territory produced such an amount as to enable the increase without incurring a loss. Treaty beneficiaries have not seen an increase since 1874, and currently receive four dollars a year.

The Robinson Huron Treaty territory has generated major revenues from forestry, mining and other resource development activities -- yet annuities have not been increased. The annuity was intended to be Lake Huron Ojibways share of the wealth generated by revenues from the treaty territory, yet many treaty beneficiaries continue to live in poverty and sub-standard housing, education, funding and health services. The plaintiffs will speak to the significance of the judgement that affirms the enforceability of the Crown promise for increases to the annuities.

## EVENT DETAILS

**What:** Judgement in RHT case

**Date and time:** December 27, 2018 at 11:00 am

**Location:** Radisson Hotel, Sudbury, ON

**Who:** Chief Dean Sayers, Batchewana First Nation of Ojibways

Chief Duke Peltier, Wikwemikoong Unceded Territory

Chiefs from the Robinson-Huron Treaty Territory *will be available for media interviews*

Legal Counsel for RHT Plaintiffs

## Contact Information

**For media inquiries, contact:** Jennifer Pereira, [jashawasegai@gmail.com](mailto:jashawasegai@gmail.com), (705) 698-7356

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**Please follow us on:**

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Anishnawbek

Serpent River

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Sheguiandah

Sheshegwaning

Thessalon

Wahnapiatae

Wasauksing

Whitefish River

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Unceded Indian

Reserve

Zhiibaahaasing

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### For immediate release

**December 24, 2018**

#### **Sudbury, ON - Historic Victory for First Nations – Court finds Constitutionally Protected Treaty Right to Resource Revenue Sharing**

168 years after signing the Robinson-Huron Treaty, the calls from former and current Anishinabek Chiefs for the Crown to fulfill its Treaty promise to share the resource revenue of the Treaty territory have finally been heard.

"We are so pleased that the Court has heard us and agreed with us that the treaty was not a one-time transaction, but an ongoing promise to share the resource revenues in the Treaty territory, laying the foundation for a respectful and mutually beneficial co-existence. We have always been ready to negotiate a renewed treaty relationship and now, with this decision, we hope to be able to get that work underway." said Ogimaa Duke Peltier, one of the six representative plaintiffs named in the Statement of Claim that was filed with the Ontario Superior Court of Justice on September 9, 2014 on behalf of all members of the Anishinabek Nation who are beneficiaries of the Treaty.

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 Anishinabek Nation that dates back to the Royal Proclamation of 1763.

Under the Treaty, entered into on September 9th, 1850 the Lake Huron Anishinabe agreed to share their lands and resources with the settlers -- approximately 35,700 square miles of territory. In return, the Crown promised, among other things, to share the net resource revenues generated from the use of the land by paying annuities that would be augmented based on the productivity of the Treaty territory. Although great wealth has since been generated from the territory, Anishinabek Treaty beneficiaries received only \$4.00 per year since 1874.

"It was discontent about mining activities by settlers without the free, prior and informed consent among the Lake Huron Anishinabek that forced the Crown to enter into a treaty relationship to get access to the lands and resources they coveted. Unfortunately, the failure to honour the Treaty promise meant the discontent continued and will continue until the case is settled. The decision is the first step to have the Treaty enforced to deliver a sharing of the wealth that our ancestors negotiated," according to Chief Dean Sayers.

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In the judgement, Madam Justice Hennessy wrote:

*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.*

The decision establishes that the promise is enforceable in court unless the government negotiates a mutually acceptable approach with the First Nations.

The Chairman of the Robinson-Huron Treaty Litigation Trust, Mike Restoule, believes that the federal and provincial governments need to get busy on seeking a settlement before the parties rack up more costs in the courtroom.

"Reconciliation is the imperative established in Supreme Court of Canada cases, in the Truth and Reconciliation Calls to Action and United Nations Declaration on the Rights of Indigenous Peoples and we are ready, willing and able to achieve reconciliation through a negotiated settlement." said Restoule.

The decision also observed the opportunity for reconciliation through treaty renewal:

*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.*

"Indeed, the spirit and reality of sharing will continue once a financial settlement is achieved", said Chief Valerie Richer. She added that the economy of Northeastern Ontario would benefit from such a settlement since the First Nations are part of the economic diversity of the region.

Failing settlement, the compensation assessment will be determined by the Courts in an upcoming hearing.

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#### **Contact Information**

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## COMMUNITY BULLETIN

December 27, 2018

### First Phase of Robinson Huron Treaty Annuity Case Decided in Favour of the First Nations

On December 21, 2018, Justice Hennessey of the Ontario Superior Court released her Judgment in Stage 1 of the Robinson-Huron Annuities Claim, including its judgment on costs. The Chiefs of the Lake Huron Anishinaabe are pleased to say that they won the case. The Court ruled that the Crown has a mandatory and reviewable constitutional obligation to increase the annuity to reflect the economic value the Crown receives from the territory. The Court found that since 1850 the Crown has acted in a way that has seriously undermined their duty of honour, which left the Treaty's promises completely forgotten by the Crown.

The first phase of the legal proceedings got underway last September 25, 2017 in Thunder Bay and culminated in July 2018. There were over 60 days of hearings which included opening statements, examinations and cross examinations of elders and various experts and legal submissions.

A critical component of the Robinson-Huron Treaty is the 'annuity' provision. Our Chiefs agreed to share lands and resources with the newcomers and in return, the Crown was supposed to pay annuities which were to be increased throughout the years. Currently, treaty beneficiaries receive a mere \$4.00 per year and there has been no increase since 1874.

The Treaty states that the annuities would increase if the resource revenue generated from the territory produced such an amount as to enable the increase without the Crown government incurring a loss. The Robinson Huron Treaty territory has generated major revenues from forestry, mining and other resource development activities -- yet annuities have not been increased. The annuity was intended to be our share of the wealth generated by revenues from our territory, yet many of our people continue to live in poverty and sub-standard housing, education funding and health services. This is not what our ancestors bargained for.

The Court did not specify a percentage for the Anishinaabe share, but only that it was not subject to a \$4.00 limit. It expressed a preference for the parties to work this out amongst themselves in negotiations. Failing negotiations, the Court said that these matters can be determined as a matter of law, according to the principles of the honour of the Crown and fiduciary obligations which impose on the Crown the obligation to give meaning and substance to, and to diligently implement, the Treaty's promise to augment the annuities.

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The issuance of the decision concludes phase 1 of the proceedings. Both Ontario and Canada may appeal the decision. The next phase dealing with the Crown assertions of technical defences will commence in 2019. The third phase will deal with determining compensation.

The Chiefs are expressing their readiness and determination to continue to battle it out in the courts, however, the preference is for Ontario and Canada to engage in negotiations to settle the claim.

We will continue to keep you, our citizens updated on all progress and key information of regarding the entire Claim's process.