

Mizhinawe Naangidoondaa

INTRODUCTION AND BACKGROUND

The Robinson Huron Treaty Litigation Fund has appointed the Honourable Harry S. LaForme to lead the Office of Mizhinawe for the Robinson Huron Treaty First Nations in the ongoing annuities litigation.

The Mizhinawe, in collaboration with the Robinson Huron Treaty leadership, will engage in information sessions from any possible settlement that may arise from the ongoing negotiations with Canada and Ontario. His role will be to write a report and make recommendations to the leadership in a way that promotes harmony in the communities. For more information, please visit the website at www.robinsonhuron treaty1850.com.

MIZHINAWE REPORT'S REPORT

Mizhinawe Harry LaForme hopes to complete his work within 6-8 months, including providing a report with recommendations on:

- Finding a balance between collective community needs and individual needs in developing options for distributions;
- Membership and beneficiary issues to ensure decisions promote harmony in communities;
- A process for addressing the 1% of compensation set aside for beneficiaries that are not members of the 21 Lake Huron Anishinaabe First Nations;
- Developing an alternative dispute resolution process to deal with any concerns from individual annuitants regarding the Compensation Disbursement Agreement and the 1% distributions;
- The making of disbursements to the 21 First Nations in accordance with the Compensation Disbursement Agreement;
- The use of the 10% of compensation set aside in the Compensation Disbursement Agreement for collective purposes.

OVERVIEW OF THE HISTORY LEADING TO THE ROBINSON HURON TREATY ANNUITY LITIGATION

On September 9, 1850, after years of struggle, advocacy and negotiations with the Crown, Lake Huron Anishinaabe entered into a Treaty with the British Crown known as the Robinson Huron Treaty ("the Treaty") at Bawating (Sault Ste.

Marie). The leaders of the Lake Huron Anishinaabe carefully thought about how to protect the collective rights of their people and how to meet the needs of the seven generations who would come after them.

The word “collective” means shared rights. Another word for collective is “community” or “communal.”

Challenges, including sustainability of the Anishinaabe way of life, and negative financial circumstance of the Crown, led to the Anishinaabe and the Crown making solemn promises to each other that laid the foundation for settlement and development of the territories and a life together.

The Robinson Huron Treaty outlines an agreement for sharing land and resources. The First Nations in the Treaty territory clearly maintain that the Huron Anishinaabe did not surrender the land but rather, agreed to share it in exchange for two thousand pounds (£2000) plus an annual payment of six hundred pounds (£600) from resource revenue in the territory.

In law an “annuity” means a fixed amount of money to be paid every year for the rest of time.

According to the Treaty, the annuity could be increased (augmented) in the future if the territory produced an amount, through its resources, enabling the Crown to increase it.

The collective annuity amount of £600 was originally based on the Anishinaabe population. The Treaty also stipulated that the amount paid to each individual “shall not exceed the sum of one pound (£1) Provincial currency (then about \$1.70) in any one year”.

The spirit and intent of the Treaty is to protect the collective rights of Anishinaabe including economic rights, and more generally the Anishinaabe way of life and the right to self-determination. The Treaty guarantees perpetual financial compensation to the Anishinaabe people respecting the revenue from the use of the Treaty Territory. Overall, the Treaty is to ensure that Lake Huron Anishinaabe are able to live with dignity, safety, and prosperity in their ancestral lands.

The Treaty states that the most that may be paid to an individual is one pound (£1) per year. The one pound (£1) individual payments are to be taken out of the collective annuity the Crown is obligated to pay annually to the Lake Huron Anishinaabe.

Almost immediately however, the Crown stopped making the collective annuity payment to the Lake Huron Anishinaabe. Instead, the Crown began to directly pay each individual one pound (£1) per year. The Crown paid each individual what one pound (£1) was worth in Canadian dollars. At one point in time one pound (£1) was worth 4 Canadian dollars (\$4.00) and the Crown has not moved away from this \$4.00 figure.

Since 1850, Lake Huron Anishinaabe (or “RHT First Nations”) have fought for the full implementation and enforcement of all Treaty rights, including the Treaty annuity augmentation clause. The Crown increased the individual annuity only once, from approximately \$1.70 per person to \$4 per person in 1875.

A proposed settlement agreement was recently developed. If finalized, it would address compensation for the Crown’s failure to respect the Treaty annuity augmentation clause. It does not deal with other kinds of Treaty breaches, nor does it deal with issues relating to compensation for future revenue taken from the Treaty Territory.

WHAT TREATY ISSUE THE PROPOSED SETTLEMENT AGREEMENT RESOLVES & WHAT IS LEFT FOR ANOTHER DAY

The settlement pertains only to the past collective annuity owed by the Crown to the Lake Huron Anishinaabe, in other words what the Crown should have paid annually. It is what the Crown owes the Lake Huron Anishinaabe because it failed to pay the collective annuity as required by Treaty.

A settlement will not resolve what collective annuity should be that the Crown is to pay to the Lake Huron Anishinaabe going forward. This very important issue is left for another day and it is not part of any current settlement discussions.

SUMMARY OF ROBINSON HURON TREATY LITIGATION (THE RESTOULE CASE)

September 9, 2023 will be the 173rd anniversary of the Treaty. The struggle for justice since 1850 by Lake Huron Anishinaabe to enforce the Treaty annuity augmentation clause in the Robinson Huron Treaty has been long and complex.

Some key events in the court battles are:

- In 2010, the 21 Robinson Huron First Nations established the RHT Litigation Fund and agreed to cooperate with each other in launching litigation to seek enforcement of the Treaty annuity augmentation promise.

- In 2012, the 21 Robinson Huron First Nations filed its Notice of Claim. This lawsuit seeks compensation from Canada and Ontario and specific declarations of law respecting the large amounts of resource revenue taken from Lake Huron Anishinaabe lands, and the Crown's persistent failure to increase annuities payments despite repeated demands.
- In 2012 a Compensation Disbursement Agreement was created and adopted by the 21 Robinson Huron First Nations. It attempts to show how a settlement, if obtained, can be distributed in a fair and just way incorporating Anishinabe traditions and teachings.
- In September 2017, legal arguments in court began at the Ontario Superior Court of Justice in Stage One of the case.
- On December 21, 2018, Justice Hennessy released her decision of Stage One issues. Justice Hennessy ruled that the Crown has a legal and constitutional obligation to increase the annuity and to do so in a way that reflects the economic value the Crown receives from the Treaty Territory.
- On June 26, 2020, Justice Hennessy released her decision for Stage Two of the case and again ruled in favour of the RHT First Nations, finding the Lake Huron Anishinaabe claims for compensation under the Treaty are not barred by Ontario's limitations legislation or other technical legal defences that Ontario had raised.
- Justice Hennessy concluded that the Treaty parties did not intend to fix a cap on the collective annuity; and that the reference to £1 in the augmentation clause is a limit only on the annuity amount that may be distributed to individuals.
- She noted that challenges lie ahead to implement the Treaty annuity augmentation rights because there is no set protocol, mechanism, or precedent for the process of determining required increases. "The parties must return to the shared goals, expectations, and understandings of the parties in 1850 and, based on those shared goals, expectations, and understandings, devise processes and procedures for the implementation of the Treaties' promise in the modern era." The implementation process must have a rational and logical connection to the shared goals, expectations, and understandings.
- Canada and Ontario appealed both of Justice Hennessy's decisions and lost. The Court of Appeal upheld Justice Hennessy's interpretation of the

augmentation clause and rejected Ontario's technical defences to avoid responsibility for its failure to pay increases. Ontario has appealed again to the Supreme Court of Canada who has agreed to hear the case if no settlement is reached.

- Trial level hearings for Stage Three issues will determine how much the Crown must pay under the Treaty annuity augmentation clause. These hearings have not been scheduled to allow the Crown and the RHT Litigation Management Fund to try to reach an out of court settlement on compensation for the Treaty annuity breach of 170 years.

On June 17, 2023 the RHT Litigation Management Fund, RHT leadership, Canada and Ontario announced a settlement in principle. But at this time there is no final settlement agreement.

Further work is required and it includes the consultation process led by the Mizhinawe. In addition, Canada and Ontario will need to complete their own internal review processes to try to get approval to sign the proposed settlement.

The proposed settlement will not be final until it is agreed to and signed by all parties, the court case is discontinued on consent of the parties and by order of the Ontario Superior Court.

If a final agreement is not reached, the Stage Three trial level proceedings would happen as well as a hearing at the Supreme Court of Canada of Ontario's appeal of the Stage One and Two trial decisions.

A MORE CAREFUL LOOK AT THE COURT DECISIONS ON TREATY MEANING

The circumstances in 1850 put pressure on both the Lake Huron Anishinaabe and the Crown to renew their relationship and to making solemn promises to each other that laid the foundation for settlement and development of the territories and a life together. This brought about the Robinson Huron Treaty of 1850 – more than 170 years ago.

The Robinson Huron Treaty outlines an agreement for sharing land and resources. The First Nations in the Treaty territory did not surrender their land, but agreed to share it in exchange for two thousand pounds (£2000) plus an annual payment of six hundred pounds (£600) from any resource revenue in the territory. The trial judge described it in 2019 as: “a promise to pay a *perpetual annuity* to the Anishinaabe, to be increased subject to certain conditions”.

In law an “annuity” means a fixed amount of money to be paid every year for the rest of time in return for, in this case, a shared use of Anishinaabe land and resources.

According to the Treaty, the annuity could be increased (augmented) in the future if the territory produced an amount, through its resources, which would allow the Crown to increase it. The Treaty also stipulated that the amount paid to each individual “shall not exceed the sum of one pound (£1) Provincial currency (then about \$1.70) in any one year”. The collective annuity amount of £600 was originally based on the Anishinabe population.

The first and only augmentation – increase - to the annuities was made in 1875 when Canada finally responded to years of demands from Chiefs. The annuities were now to be \$4.00 (at that time still equivalent to £1) per Anishinaabe person. The Crown interpreted this to mean that the Treaty did not impose an obligation to increase the annuities beyond \$4 per person, which remains in place today. The position of the Crown at trial was that, since \$4.00 was the maximum obligation regarding annuities under the Treaty, the Crown has met its Treaty obligation.

The Crown, rather than give the collective annuity amount to the Chiefs to use for any distribution to an individual Anishinabek people, took it upon itself to hand out the (£1) \$4.00 to them. That practice continues to this day. This is a misinterpretation of the Treaty, intentional or otherwise, as the courts have now stated and made clear.

[The Court Decisions](#)

The trial judge held that the parties intended that the reference to £1 (equivalent, at one, to \$4.00 Canadian) in the Treaty and the augmentation (increase) clause is a limit only on the amount that may be distributed to individuals. And, the £1 (\$4.00) per capita amount is only a portion of the collective lump sum annuity payable to the Chiefs and their Tribes. That is:

The Treaty was a collective promise to share the revenues from the territory with the collective; in other words, to increase the lump sum annuity so long as the economic condition was met. The reference to £1 (equivalent of \$4) in the augmentation clause is a limit only on the amount that may be distributed to individuals.

Again, the annuity was originally a collective amount of £600, which was decided by the Anishinaabe population – and the ability of the Crown to pay - and is the source from which the payment of \$4.00 per person is payable. The Superior

Court trial decision and that of the Ontario Court of Appeal agreed with that interpretation.

On June 17, 2019, the trial judge issued a judgment which reads:

1. Pursuant to the Robinson Huron Treaty of 1850, *the Crown is obligated to increase*, and the *First Nation Treaty Parties have a collective treaty right* to have increased, from time to time, *the promised annuity payment of £600 (or \$2,400)* if net Crown resource-based revenues from the Treaty territory permit the Crown to do so without incurring loss, with the amount of annuity payable in any period to correspond to a *fair share* of such net revenues for that period; and,
2. The Crown shall, in a manner consistent with the honour of the Crown, consult with the First Nation Treaty parties *to determine what portion, if any, of the increased annuity* amount is to be distributed by the Crown to the individual Treaty rights holders *in addition to the \$4 per person per year* they are already being paid;

On November 5, 2021 the Ontario Court of Appeal upheld Justice Hennessey's decisions. The trial judge was correct in her interpretation of the Treaty augmentation clause. What this means is that the Robinson Huron Treaty of 1850 provides that the Lake Huron Anishinaabe were promised that the Crown would pay them the collective amount of £600 (\$2,400) annually, in return for sharing their territory with the Crown. From this collective amount the Crown promised to pay to the Huron Anishinaabe an amount up to one pound or \$4.00 per person.

The Crown also promised the Lake Huron Anishinaabe that the £600 (\$2,400) would be increased if net Crown resource-based revenues from the territory permitted, and the Crown would not incur a loss. Finally, the Treaty parties would decide what portion, if any, of the increased collective amount would be distributed to individuals in addition to one pound (£1) \$4.00 per person.

The leadership and legal team have asserted that the perpetual right to an annuity based on resource revenue sharing is a collective right of all the Robinson Huron communities. It is a fact that the annuities have been paid to individuals on a yearly basis consistent with how the initial compensation and perpetual annuity was paid in 1850 and the years afterward.

As the courts have said, this is wrong - the annuity payments are not individual rights and the compensation for arrears does not have to be paid out as per capita payments.

SETTLEMENT DISCUSSIONS

The parties are attempting to reach a decision on the amount the Crown should have paid to the Lake Huron Anishinabe from 1850 to the present if the correct interpretation of the Robinson Huron Treaty had applied. They are not considering the amount or how the Treaty works going forward. That is still to be decided and it is being pursued by the Lake Huron Anishinabe legal team.

We are hopeful that a settlement will be reached in the same spirit of unity and kinship that our ancestors brought to those original treaty negotiations more than 170 years ago. Anishinaabe leaders of the time wanted to ensure that our collective rights to land, prosperity, and more were enshrined in the treaty itself for the benefit of generations to come, including all of us alive today.

Our leaders who signed the Robinson Huron Treaty in 1850 were informed by Anishinaabe laws and traditions based on respectful relationships and coming together with responsibilities to each other as community members. They advocated for our rights to practices like hunting and fishing, to our inherent place in our homelands, and to the benefits outlined by the treaty itself, like annuity payments.

The Anishinaabe treaty signatories engaged in these negotiations as our representatives of the overall collective of Anishinaabek throughout our homelands. They believed in a mutual responsibility shared by all leaders - including the Crown - in upholding respectful relations with one another.

In many ways, our ancestors saw treaty-making as a way to expand and strengthen kinship, keeping us together and alive in a radically transforming world. Although the settling of Canada divided our nation, our collective as Anishinaabek remained intact.

And once again, we are potentially faced with another radical transformation as our leaders work with Crown representatives to right the wrongs of treaty implementation. The ongoing negotiations could lead to a moment in history unlike any other.

As this new history begins to unfold, it's important to remember the principle of mutual care that was revered by our ancestors when they entered into the treaty-making process. They wanted us to prosper as individuals, but they also wanted to ensure we worked together for future generations. To assist in this task a Compensation Disbursement Agreement was created and adopted in 2012. It attempts to show how the settlement, if any, can be distributed in a fair and just way incorporating Anishinabe traditions and teachings.

SOME QUESTIONS – MIZHINAWE NAANGIDOONDA

This section poses some questions to help the Mizhinawe learn the views of the communities, people and leadership on his work to develop recommendations and a report.

These questions may evolve over time to reflect what is learned during the naangidoondaa process. Please do not feel restricted by the questions in this document – we want to hear what you believe is important for us to know so be sure to tell us anything we might have missed.

It is hoped that the naangidoondaa process will lead to recommendations that will contribute to a fair distribution of the settlement funds in a way that will do honour to our ancestors, provide for future members, protect the safety of citizens in the Robinson Huron Treaty territory, and contribute to long-term prosperity for each community.

We are also interested in hearing your views regarding the 10% set aside for collective purposes to advance the rights and interests of the 21 First Nations. We hope it can be used by communities as a way to assist with the recovery from colonization and strengthen the relationships with other nations in a way that responds to individuals and communities. In other words, that it will contribute to reconciliation, including for future generations.

QUESTIONS

In some of the following questions, you will notice some options that might help you as you consider your response. However, please feel free to suggest other options. Also please tell us about any ideas or concerns that you have that we may not have addressed in this document.

Treaty Annuitants

Many of the issues around who is a Treaty annuitant have been created by unilateral decisions by the federal Crown contrary to the rights of Anishinaabe. That is still the case today. This has resulted in many inequities.

These decisions need to be returned to Lake Huron Anishinaabe. It would be helpful to the Mizhinawe to hear your views on issues of membership and Treaty entitlement.

Question 1: How do you define who is a RHT treaty member in your First Nation?

Question 2: Please describe any issues you think your First Nation will encounter when determining who is a treaty annuitant and how should these issues be handled?

Allocation of the Collective Payment by the First Nation

When signing the Treaty in 1850, the leadership of the Lake Huron Anishinaabe thought of the needs of the seven generations to come. Our Anishinaabe teachings require us to consider the seven generations that came before us and the seven generations that will come after us whenever we, as Anishinaabe, are making decisions.

In 2010 the leadership of the 21 Robinson Huron Treaty First Nations agreed that the 21 First Nations would strive for conformity, consistency, fairness and unity among all.

Question 3: How should your First Nation allocate the collective payment it receives from a settlement?

Question 4: What would you like to see happen to represent the collective nature of your treaty in a way that the people in your community would support?

Question 5: What principles and ideas do you have to carry on the collective nature of the Treaty?

Question 6: How can the community ensure that the settlement benefits future generations?

To stimulate thought, some things that could be considered include:

- Establishing education and training programs
- Creating youth mentorship and leadership initiatives
- A combination of the above options
- Anishinaabemowin preservation and revival
- Housing
- Addiction and treatment healing
- Other?

Caring for Trust Settlement Funds

Question 7: How could Trust settlement funds be cared for and administered?

Additional Supports

Question 8: What additional support or resources do you think your community requires to effectively participate in the settlement process?

The 10% set aside for collective purpose

Question 9: 10% of the treaty payment has been set aside for the collective purposes of advancing the rights and interests of the members and First Nations as a whole. The trustees of the Robinson Huron Treaty Trust have a responsibility to ensure the appropriate application of these funds according to the trust indenture. What do you think should happen with these funds?

Some examples might be:

- War chest for future legal battles and to defend the rights of the Robinson Huron Treaty members and First Nations
- To build a database for all Robinson Huron Treaty members based on Anishinaabe law.
- To form a Treaty organization that does not require government funding or rely on the Indian Act for all Robinson Huron treaty members.
- Whatever we do must include Anishinaabemowin preservation and revival.
- Other suggestions?

Community Impacts

Each individual First Nation and each member of the First Nation who receives any monies from the settlement will need to understand their responsibilities for managing the sums of money they receive. It is possible some supports could be put in place. Financial literacy, including information about investing, is one tool that could be made available to First Nations' leadership and staff - in-person, online and in print.

Question 10: In order to ensure communities and individuals are ready for the potential influx of large sums of money, do you have views on the kind of supports that should be in place?

Some Additional Questions

Question 11: Are there are any concerns or suggestions related to the Robinson Huron Treaty settlement process or the Mizhinawe's naangidoondaa process that you would like to share?

Question 12: In addition to the questions outlined in this document, what other questions should be asked of community members?

Question 13: Do you have any further advice for the Mizhinawe?

Miigwech for taking the time to answer our questions