



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

Sheshegwaning
First Nation

Thessalon
First Nation

Wahnapiitae
First Nation

Wasauksing
First Nation

Whitefish River
First Nation

Wiikwemkoong
Unceded Territory

Zhiibaahaasing
First Nation

November 17, 2021

Honourable Marc Miller
Minister of Crown and Indigenous Relations
House of Commons
Ottawa, Ontario
K1A 0H4

Dear Minister:

On behalf of the Robinson-Huron Treaty leadership we offer our congratulations on your appointment as Minister of Crown-Indigenous Relations. We look forward to working with you and to establish a respectful relationship through an early meeting to enable our leadership to present our perspective on reconciliation, particularly as it relates to the resolution of the Robinson Huron Treaty litigation including past compensation and the full implementation of the Treaty augmentation promise going forward.

The Restoule case has been in litigation for seven years now and we have been successful at every stage. The Ontario Superior Court issued a Stage One Decision in this case in December 2018, confirming that the augmentation promise in the Treaty is a “mandatory and reviewable obligation on the Crown to increase the Treaties’ annuities when ... the net Crown resource-based revenues permit the Crown to increase the annuities without incurring a loss”. This was followed by a formal Judgment on June 17th, 2019, whereby the Court explicitly declared the rights and obligations of the parties, which included among other things, that the augmentation promise is a Treaty right recognized and affirmed by s. 35 of the Constitution Act, 1982, and that the Crown is obligated to diligently implement the augmentation promise. The Superior Court also issued a Stage Two Decision in June 2020, rejecting the Ontario Crown’s limitations and immunity defenses.

Both decisions were appealed by Ontario, and as you know, the Ontario Court of Appeal issued a lengthy Decision on November 5th, 2021, unanimously rejecting the majority of the arguments raised by Ontario in the Stage One appeal and dismissing the Stage Two appeal in its entirety.



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Most significantly, the Court unanimously affirmed that the augmentation promise is a justiciable and constitutionally recognized treaty right under s. 35 of the Constitution Act, 1982 and that it is enforceable through the Honour of the Crown. The Court was also unanimous in urging the parties to negotiate a resolution of the case in the interests of reconciliation.

We have sent numerous letters to the Prime Minister and your predecessor Carolyn Bennett regarding the Robinson-Huron Treaty annuities case, urging them to negotiate. Most recently, on September 9th -- the 171st anniversary of the signing of the Treaty -- the Chiefs of the twenty-one Robinson Huron Treaty First Nations signed a Petition and Memorial addressed to the Governor General of Canada and the Lieutenant Governor of Ontario, complaining that neither the Crown in right of Canada nor the Crown in right of Ontario have taken any steps to implement the augmentation promise and are thereby failing to abide by the June 2019 Judgment of the Superior Court. The Petition and Memorial urges the Crown to act honourably and engage in a process to carry out, implement and fulfill the Judgment of the Superior Court.

Given that the November 5th Decision of the Ontario Court of Appeal upholds the Superior Court Judgment almost in its entirety, the complaint of the Petitioners and Memorialists continues to be valid. And so, we repeat that the Crown is in breach of its obligations under s. 35 of the Constitution Act, 1982 and is acting dishonourably as long as it continues to fail to implement the augmentation promise and refuses to abide by the Judgment of the Superior Court as amended by the Ontario Court of Appeal.

As noted in the Petition and Memorial, by way of a letter from your predecessor, Carolyn Bennett, dated August 12, 2021, Canada has expressed that it is prepared to enter into negotiations in order to resolve the litigation out of court. However, this is stated to be conditional on Ontario's participation in the negotiations, which is effectively a refusal to negotiate because of the failure of the Crowns to agree on the apportionment of liability.

The Ontario Court of Appeal has identified the failure of Canada and Ontario to agree on the allocation of Crown liability as an impediment to negotiations. At paragraph 333, the majority of the Court states:

We urge both Crown parties to reconsider their stance on expediting the allocation issue in order to facilitate the negotiation of an agreement on the implementation of the Robinson Treaties. In our view, the best way to accomplish the task of reconciliation is through negotiation. Compared to continued litigation, with its attendant close judicial management, a modern agreement on the implementation of the Robinson Treaties, negotiated by the



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Treaty parties, is more likely to produce a strong, renewed Treaty relationship. True reconciliation will not be achieved in the courtroom.

We agree entirely with this assessment.

Canada has not been as adversarial as Ontario. It did not appeal, choosing instead to accept the Superior Court decisions and affirm that negotiations are the way forward on reconciliation. But, as much as Canada has purported to choose the path of reconciliation, it still has not fully acted on its intentions. The fact that the former Minister's letter sets out the condition that Ontario be a party to the negotiations effectively stifles settlement.

Consistent with the above statement of the majority of the Ontario Court of Appeal, we urge you to come to a speedy settlement with Ontario on the Crown allocation issue, failing which you should instruct your lawyers to expedite the determination of the Crown allocation issue by the Court. This will facilitate a negotiated resolution.

Further, if Ontario continues to refuse to participate in negotiations, we urge Canada to act decisively on a bilateral basis with us, to engage in negotiations to resolve this litigation. It is our view, supported by precedent, that it is within Canada's power and ability to negotiate past compensation with us, as treaty paymaster, and resolve the issue of past compensation bilaterally with Ontario. It is also our view that Canada has authority and duty to work cooperatively and proactively with us in engaging Ontario to implement the augmentation promise going forward.

Based on former Minister Bennett's letter, we understand that the mandate and authority to negotiate and settle the litigation has been approved by Cabinet. We encourage you to appoint your negotiator as an important first step toward addressing the above-noted issues and moving forward with reconciliation.

Included among the many letters sent to former Minister Bennett, was a request for a meeting which has so far gone unanswered. We hope you will choose to meet with us as you recently did with the leadership of Treaty 7 and the executive leadership of the Anishinabek Nation, to advance reconciliation and restore trust and respectful relationships.



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We welcome confirmation from you that you will meet with us and await your prompt reply. We believe that, in working with you, we can establish and travel the path to reconciliation. It is potentially a long and challenging path, therefore, the sooner we meet the sooner we can plan our journey together.

Miigwech,

Chief Dean Sayers

Ogimaa Duke Peltier

Cc: National Chief Roseanne Archibald
Ontario Regional Chief Glen Hare
Robinson Huron Chiefs