



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

UPDATE ON RHTLF INTERVENTION IN *JIM SHOT BOTH SIDES, ET. AL. V. HIS MAJESTY THE KING* CASE IN THE SUPREME COURT OF CANADA

Robinson Huron Treaty Territory, April 15, 2024 – Regarding the Jim Shot Both Sides decision released by the Supreme Court of Canada on April 12th, the Robinson Huron Treaty Anishinaabek noted that they intervened in the case to emphasize the nation-to-nation nature and enforceability of treaties. Therefore, although the Court ruled that the Blood Tribe's claim to damages was barred by the Alberta statute of limitations, the Supreme Court held that treaties were enforceable; in addition, it issued a declaration supportive of the Blood Tribe's claim, upholding the nation-to-nation nature of treaties and emphasizing that the Crown is honour bound to uphold its treaty obligations.

The Blood Tribe claimed that the Crown had breached Treaty No. 7 by providing a Reserve that was 162.5 square miles smaller than what they were entitled to under the Treaty Land Entitlement (TLE) formula. The Crown argued that the claim was barred by Alberta's limitations legislation. At the Supreme Court of Canada, the Blood Tribe argued that the limitations period did not apply because their claim was not enforceable until 1982, when treaty rights were given constitutional recognition. The Court rejected the Blood Tribe's argument and held that treaties were enforceable in their own right prior to being given constitutional recognition, as nation-to-nation agreements.

Importantly, the Court's decision indicates that the Blood Tribe did not, in that Court, advance other arguments regarding the applicability of statutory limitations, either in terms of challenging the constitutionality of the limitations legislation, or the discoverability of the claim (an event which starts the clock on the time to file a claim in court). Therefore, these arguments remain available to other First Nations' or Indigenous parties to make in future cases.



Robinson Huron Treaty LITIGATION FUND

The Robinson Huron Treaty Anishinaabek currently has a case (Restoule case) under reserve in the Supreme Court of Canada that was heard by the Supreme Court of Canada shortly after the Jim Shot Both Sides case. The Restoule case involves the Robinson Huron Treaty signed in 1850 with the British Crown and a promise in the Treaty to augment the annuity payable under the Treaty, if the resource development generates enough wealth to enable the Crown to increase the annuity without incurring a loss. The Anishinaabek won their breach of treaty claim in the Ontario Superior Court, and also won at the Ontario Court of Appeal. Ontario appealed to the Supreme Court.

The Robinson Huron Treaty Anishinaabek reached a \$10.0 B settlement with Ontario and Canada for past compensation. The outcome of the Restoule appeal in the Supreme Court will not affect the settlement. The Jim Shot Both Sides case and the upcoming decision in the Restoule case are significant because the Anishinaabek still have to negotiate the go-forward implementation of the augmentation promise.

In their intervention in Jim Shot Both Sides, the Robinson Huron Treaty Anishinaabek argued that treaties are and were always enforceable. The Court agreed holding that “Treaties are enforceable from the date of execution” such that they impose duties on the Crown enforceable under the common law. The Court emphasized that this enforceability is “based on the mutual consent of the parties” and is “supported by the fundamental nature of the promises they enshrine.” The Court explicitly holds that the, “[t]he conclusion of a treaty-making process creates active and binding obligations on the Crown” and that the characterization of treaties “as political matters prior to 1982 ... undermines the binding nature of promises made in historic treaties.” The Court refers to previous Robinson Huron Treaty cases as examples of the enforceability of treaties.

“The Supreme Court of Canada affirmed that treaty rights flow from the treaty, not from the Canadian Constitution and treaties are enforceable in the common law. Furthermore, the courts have the power to address dishonourable conduct by the Crown despite the existence of statutes of limitation,” said Duke Peltier, spokesperson for the RHTLF.



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Flowing from the conclusion that treaties are enforceable is the holding that judicial remedies, ranging from bare declarations to coercive monetary orders, are also available based on the obligations enshrined in treaties and do not require s. 35(1) or legislation enacted under s. 91(24). The Court's statement here puts to rest old arguments that the enforceability of treaties arises from their recognition or reference to statutory provisions like s. 88 of the Indian Act which was long relied upon as a defence in cases involving fishing and hunting charges under provincial legislation.

Chief Angus Toulouse acknowledged the Supreme Court of Canada's willingness to use their discretionary authority to apply declaratory relief to help the treaty parties to resolve the issues that are disputed among them. "It was important for the court to point out that declaratory relief can assist in providing a clear statement on the legal rights of First Nations parties and assist with efforts to restore the nation-to-nation relationship," said Chief Toulouse.