

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, on their own behalf and on behalf of all members of the Ojibewa (Anishinabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date **SEP 09 2014**

Issued by..... 

Local registrar



**Superior Court of Justice
155 Elm Street
Sudbury, ON P3C 1T9**

**TO: THE ATTORNEY GENERAL OF CANADA
284 Wellington Street
Ottawa, ON K1A 0H8**

**AND TO: THE ATTORNEY GENERAL OF ONTARIO AND
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Crown Law Office - Civil
Ministry of the Attorney General
8th Floor, 720 Bay Street
Toronto, ON M7A 2S9**

CLAIM

THE PLAINTIFFS' CLAIM

1. The Plaintiffs seek the following relief:

- a) A declaration that, from 1850 to 1874, the Crown breached its obligations under the Robinson Huron Treaty (Treaty), by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty to a collective amount reflecting payment of one pound or more per individual;
- b) A declaration that, from 1850 to 1874, the Crown breached its fiduciary duty under the Treaty, by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty to a collective amount reflecting payment of one pound or more per individual;
- c) A declaration that, from 1850 to 1874, the Crown failed to act honourably, by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty to a collective amount reflecting payment of one pound or more per individual;
- d) A declaration that, from 1875 to the present, the Crown breached its obligations under the Treaty, by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty, to a collective amount reflecting payment in excess of one pound per individual, accounting for such further share of resource revenues from the Treaty territory as the Crown could pay without incurring loss;
- e) A declaration that, from 1875 to the present, the Crown breached its fiduciary duty, by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty, to a collective amount reflecting payment in excess of one pound per individual, accounting for such further share of resource revenues from the Treaty territory as the Crown could pay without incurring loss;

- f) A declaration that, from 1875 to the present, the Crown failed to act honourably, by failing to augment the perpetual annuity beyond the six hundred pounds promised in the Treaty, to a collective amount reflecting payment in excess of one pound per individual, accounting for such further share of resource revenues from the Treaty territory as the Crown could pay without incurring loss;
- g) A declaration that the Crown breached its duty to properly consult and accommodate the Plaintiffs with respect to the appropriate manner and amount by which the annuity should have been increased over the years since 1850;
- h) A declaration that the Crown, in taking up Treaty land, had and has a continuing duty to properly consult and accommodate the Robinson Huron Treaty Anishinabek with respect to the appropriate manner and amount by which the perpetual annuity should have been and should be increased on an on-going basis;
- i) A declaration that the Crown had and has a continuing duty to monitor, record and report to the Plaintiffs, on regular basis, financial and economic information in order to determine whether the Treaty Territory was and is able to produce such an amount so as to enable the Crown, without incurring a loss, to increase the annuity;
- j) An order or a declaration that the Crown provide an accounting to the Plaintiffs of the net revenue from the Treaty Territory, being the revenues produced in the Treaty territory, deducting therefrom the direct costs to produce such revenues, for each calendar year from 1850 to the date of the order or declaration, so as to determine if the Crown was able to increase the annuity without incurring loss;

- k) Judgment after such accounting that the Crown is to forthwith provide payment of a fair share of the net profit, said share to be the subject of a negotiated agreement between the Crown and the Plaintiffs, failing which, such share as this Honourable Court deems just, together with interest compounded annually at commercially reasonable rates;
- l) Compensation for breach of treaty, breach of the honour of the Crown and breach of fiduciary duty;
- m) Pre and post judgment interest;
- n) Costs on a solicitor client basis for this proceeding and any subsequent reference or proceeding originating from this proceeding; and
- o) Such further and other relief as this Court may deem just.

THE PARTIES TO THE CLAIM

Plaintiffs

2. The Plaintiffs bring this claim on their own behalf and on behalf of all the members of the Ojibewa (Anishinabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850 (hereinafter the "Robinson Huron Treaty Anishinabek").
3. The following bands (First Nations) have beneficiaries within their populations and are collectively successors to the signatories of the Robinson Huron Treaty of 1850: Atikameksheng Anishnawbek, Aundeck Omni Kaning First Nation, Batchewana First Nation of Ojibways, Dokis First Nation, Henvey Inlet First Nation, Magnetawan First Nation, M'Chigeeng First Nation, Mississauga #8 First Nation, Nipissing First Nation, Ojibways of Garden River First Nation, Sagamok Anishnawbek, Serpent River First Nation, Shawanaga First Nation, Sheguiandah First Nation, Sheshegwaning First Nation, Thessalon First Nation, Wahnapiatae First Nation, Wasauksing First Nation, Whitefish River First Nation, Wikwemikong

Unceded Indian Reserve No. 26, and Zhiibaahaasing First Nation, all of which are bands within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended.

4. The Robinson Huron Treaty Anishinabek and the said constituent First Nations are Aboriginal peoples within section 35 of the *Constitution Act, 1982*.
5. The Band Councils of the respective First Nations have passed band council resolutions, in accordance with their governing powers, authorizing the named representative Plaintiffs to commence this action on behalf of the Robinson Huron Treaty Anishinabek, including their respective First Nations and all Robinson Huron Treaty beneficiaries.
6. The Plaintiffs are all status Indians under the *Indian Act*, as amended, and beneficiaries under the Robinson Huron Treaty. As such they are entitled to collect annuities as set out in the Treaty. Mike Restoule is a member of Nipissing First Nation. Patsy Corbiere is a member and Chief of Aundeck Omni Kaning First Nation. Duke Peltier is a member and Chief of the Wikwemikong Unceded Indian Reserve No. 26. Peter Recollet is a member of Wahnapiatae First Nation. Dean Sayers is a member and Chief of Batchewana First Nation. Roger Daybutch is a member of Mississauga #8 First Nation.
7. This claim is without prejudice to any other rights and claims of the Robinson Huron Treaty Anishinabek and the constituent First Nations, including any Aboriginal rights or treaty rights under this or any other treaty.
8. The traditional territory inhabited and claimed by the Robinson Huron Treaty Anishinabek at 1850, included the region on the northern and eastern shores of Lakes Huron and Lake Superior covered by the Treaty. The Robinson Huron Treaty Anishinabek continue to exercise Aboriginal and Treaty rights over their traditional territory, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

9. According to their customs, practices and traditions ("Anishinabe law"), title and control over their territory was divided amongst the bands, the main decision-making authority within the Anishinabe Nation. The Crown understood this. Matters affecting more than one band or the Nation as a whole, such as treaties, were dealt with in general councils. Chiefs and Principal Men participated in treaty negotiations with the authority to refuse or accept the terms of the treaty on behalf of their respective bands in accordance with Anishinabe law.
10. In negotiating the terms of the Treaty, the Crown relied on the Robinson Huron Treaty Anishinabek to identify Treaty beneficiaries who maintained a connection to the Treaty territory and were recognized under Anishinabe law.

Defendants

11. The Defendant, Attorney General of Canada ("Canada") is the representative of Her Majesty the Queen in Right of Canada, pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50, as amended.
12. The Defendant, Her Majesty the Queen in right of Ontario ("Ontario") is named pursuant to s. 9 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.
13. The Attorney General of Ontario is named as a party to the action because declaratory relief is sought against the Province of Ontario.
14. The Crown Defendants, are, either alone or together, successors to all of the obligations, duties and liabilities of the Imperial Crown, and the Province of Canada, and in particular to the obligations, duties and liabilities owed to the Plaintiffs. Reference in this document to "the Crown" includes either or both of the Defendants to the extent of their respective obligations, duties and liabilities. The Defendants are jointly and severally liable to the Plaintiffs, each to the extent of their respective jurisdictional competence.

FRAMEWORK FOR TREATY NEGOTIATIONS

Royal Proclamation of 1763

15. Indian Nations including the Anishinabe Nation were already here when Europeans first set foot in North America, organized in societies with their own laws – customs, practices, and traditions.
16. Conflicts arose between the French and the British for control, as between each other, over territories in North America, which eventually led to the Seven Years War. Indian Nations participated in that war, as allies of one side or the other. The British eventually prevailed over the French, in part due to the shift in alliance of certain Indian Nations, away from the French, or from the French to the British. The Treaty of Paris, entered into between the British and the French on February 10, 1763, formalized the end of the Seven Years War.
17. Following the defeat of the French in the Seven Years War, Indian Nations were concerned, among other things, about the British intentions regarding their land rights, which culminated in the Pontiac Rebellion. To allay Indian concerns, King George III of Britain issued a Royal Proclamation on October 7, 1763, which among other things, contained provisions to protect the land rights of Indian Nations in North America.
18. By the terms of the *Royal Proclamation of 1763*, R.S.C. 1985, App. II, No. 1, lands possessed by Indians Nations in North America are reserved to them unless ceded to the Crown, according to the surrender procedures outlined in the *Proclamation*. The *Royal Proclamation of 1763* also reserves, “under the Crown’s sovereignty, Protection and Dominion, for the Use of the said Indians”, an Indian territory, lying within the interior of British North America. The traditional territory of the Robinson Huron Treaty Anishinabek, including the territory covered by the Treaty, lies within the Indian territory reserved by the *Royal Proclamation of 1763*.

19. The *Royal Proclamation of 1763*, which was enacted under royal prerogative with the force of law, was a formulation of the policy adopted by the British Crown to treat First Nation peoples fairly and honourably and to protect them from exploitation in the acquisition of their traditional lands. The terms of the *Royal Proclamation* established the governing principles in which the Crown was obligated to deal honourably with Indian lands: first, by making them inalienable to anyone but the Crown; and second, by establishing a strict procedure for the purchase of Indian lands.
20. In 1763, the British Crown relied on maintaining good relations with First Nations in order to maintain peace and security within those territories it had won from France. Dealings between the British Crown and First Nations were as between sovereign nations and were governed by treaties embodying both British and First Nations laws.
21. Under the edict of the *Royal Proclamation*, the British Crown set out a treaty process for the purchase of Indian lands by the Crown. According to the *Proclamation*, "if at any time, any of the Indians should be inclined to dispose of the said lands, the same shall be purchased by us, in our name, at some public meeting or assembly of the said Indians, to be held for the purpose" Treaties required there to be consent between the two parties, and the First Nations were to be compensated for any lands or resources secured by the British Crown.
22. The recognition of Aboriginal title in the *Royal Proclamation* has been and has remained a policy of the Crown since 1763. It formed a very strong basis for the subsequent treaty-making process and has survived and continues to form the basis for Crown - First Nation relations.
23. The procedures for treaty-making were well established by the turn of the 19th century: they included a blend of First Nation and British customs and usages and were reflected in orders issued by Crown officials. For example, the *Dorchester Regulations of 1794*, provided that Indian land surrenders required

deeds of conveyance; but also that they be made "in public council with great solemnity and ceremony, according to the ancient usages and customs of the Indians". The Regulations also required the presence of the Governor or his designate, representatives from the Indian Department, and military officers; and that the terms be translated and explained to the Indians.

Treaty of Niagara, 1764

24. Following the *Royal Proclamation of 1763*, the Niagara Treaty Council was called by the Crown in the summer of 1764, to formally announce the terms of the *Royal Proclamation* to Indian Nations and to further quiet Indian unrest in accordance with Indian laws and diplomatic conventions. At the request of the Crown, more than 2,000 First Nations chiefs representing some twenty-two Indian Nations, including chiefs from the Anishinabe Nation, attended the Treaty Council at Niagara. The Crown's purpose in calling the Grand Council was to create and renew Indian alliances and at the same time use those alliances to bring Pontiac and others in-line with British interests.
25. The Treaty Council affirmed the pre-existing land rights protection recognized by the *Royal Proclamation of 1763*. Sir William Johnson, the Crown representative, conveyed the provisions of the *Royal Proclamation* respecting Indian lands and committed the Crown to the enforcement of those provisions. The Treaty Council also affirmed the practice of gift-giving, or Indian presents, which was a foundational obligation or diplomatic protocol for establishing relationships under Anishinabe law. Sir William Johnson, who was well versed in First Nation diplomacy, also bound the Crown to honour this obligation in accordance with Indian laws, traditions and customs.
26. Under the Niagara Treaty, the First Nations in attendance confirmed their attachment as allies to the British Crown. This included the Anishinabe Nation. Indeed, Robinson Huron Treaty Anishinabek, including Shingwakonce and other

leaders, later fought as allies of the British Crown in the War of 1812. Shingwakonce was a Chief of those Anishinabek around Sault Ste. Marie.

Royal Bounty – Distribution of Indian Presents

27. Anishinabe law and diplomatic protocol required on-going renewal of the relationship between the Crown and First Nations. This renewal occurred at public gatherings, where gifts of wampum, silver, food, weapons, furs, tools and clothing were exchanged as symbols of good will and tokens of the military and political alliance. The distribution of "Indian Presents", which was an important part of Anishinabe law, became part of an annual practice. The Presents were paid for by the Imperial government and not the colonial government. As Lord Elgin indicated in a letter to Lord Grey on October 25, 1850, "the presents have always been received as Royal Bounty in acknowledgement of the fidelity with which the tribes stood by their Great Father the King of Great Britain in various wars." They were considered a sacred trust by the Indians, pledged to last as long as the water flowed and the grass grew.
28. Indian Presents were distributed annually by the Crown to the Anishinabek, during the summer months, in gatherings at Michilimackinac and Drummond Island (Michigan), Penetanguishine on Georgian Bay and in later years on Manitoulin Island.

Administration of Indian Affairs

29. From the beginning of British rule in North America, the administration of Indian Affairs was the responsibility of the British Imperial Crown and not the colonial government. In 1841, under the *Act of Union*, the Crown surrendered control of land revenues to the colonial government along with the responsibility for certain governmental expenditures. However, Indian Affairs remained an Imperial responsibility, including payment of Indian Presents.

30. The Governor General was responsible for Indian Affairs and reported to the Colonial Secretary in London. By the mid-1840's, Indian Affairs came under the Superintendent General of Indian Affairs, who was the Governor General's Civil Secretary. At the time of the Robinson Treaties, and in the period leading-up to them, the Governor General was Lord Elgin and Col. Robert Bruce, his brother, was the Superintendent General of Indian Affairs.
31. The administration of Indian Affairs was devolved from the Imperial government to the provincial government in 1860; and with Confederation, in 1867, Indian Affairs came under federal responsibility.

THE ROBINSON TREATIES

1848 – First Anderson Commission

32. In the period leading-up to 1850, there was increasing non-native presence in the lands north of Lakes Huron and Superior, related particularly to mining. A mining boom in northern Michigan in the early 1840's sparked interest in mineral resources on the British side of the upper Great Lakes. Non-native encroachment on their traditional territory raised the ire of Anishinabek and fuelled a movement for recognition and protection of Anishinabek lands and resource rights. Shingwakonce and his son-in-law, Nebenaigoching, two Chiefs from the Sault Ste. Marie area, were key players in the movement.
33. In 1822, American Indian Agent at the Sault, Henry Rowe Schoolcraft, described Shingwakonce as "a chief of shrewd and grave countenance." Shingwakonce had been decorated by the Crown for fighting in the War of 1812. Nebenaigoching's father, Chief Wabechechake, had been killed in the same War. Both Shingwakonce and Nebenaigoching were incensed at the Crown's treatment of its loyal Indian allies.
34. The Anishinabek movement involved a series of actions and petitions. In April 1846, Shingwakonce and Nebenaigoching, confronted Alexander Vidal, a

provincial land surveyor, who was carrying out survey work on Anishinabek land in the Sault: they claimed the land as their own under Anishinabe law and protested that the Crown had never entered into a treaty with them to obtain access to the land.

35. In June 1846, Shingwakonce sent a petition to the Governor General expressing concerns about mining activity on Anishinabek lands. In his petition, Shingwakonce indicated that he was aware of the value of the minerals and he said that his people ought, "to derive some benefit from them." Similar requests were being made by other Anishinabek from the Lake Huron region.
36. The provincial government had issued mining regulations in 1845, pursuant to which exploration licences were issued. By 1847, a number of mining locations, 2 miles by 5 miles, had been issued on the north shores of Lakes Huron and Superior. Several tracts had been surveyed in the vicinity of Shingwakonce's village at Garden River, one of which included the village site itself.
37. In May of 1847, Anishinabek drove off a crew carrying out mining exploration for the Montreal Mining Company, which was reported to the Governor General. Shingwakonce, Nebenaigoching and a number of other Anishinabek sent another petition to the Governor General in July 1847, wherein they requested a meeting. Reminding Lord Elgin that they were allies of the Crown and as allies had fought in the War of 1812, they asked for a treaty, as was the custom between the Crown and Indian nations before taking possession of Indian lands.
38. In the spring of 1848, Shingwakonce and a delegation of Anishinabek chiefs went to Montreal, then the seat of government, to press their case directly with the Governor General. The provincial government had initially rejected the Anishinabek claims, however, Governor General Lord Elgin, was not satisfied with this position. Therefore, on July 30, 1848, he commissioned Thomas G. Anderson, former Superintendent at Drummond and Manitoulin Islands, and himself a veteran of the War of 1812, to examine the Indian claims.

39. Thomas Anderson held a Council meeting with Chief Shingwakonce, Nebenaigoching and other Anishinabek Chiefs. In his report following the meeting, Anderson advised the Governor General that the Anishinabek were undoubtedly the proprietors of the lands they claimed. He said that the Anishinabek's right to the land:

....continued unmolested from time immemorial to the present day. They do not admit that it can be owned by any power under pretext of the right of conquest.

40. Anderson recommended that the government negotiate a treaty "to extinguish the Indian right" in return for equitable remuneration in the form of a perpetual annuity and reservation of certain tracts of land.
41. The Crown failed to take immediate action in response to Anderson's recommendations. This led to increased tensions between the miners and the Anishinabek in the Lake Huron and Lake Superior regions and further efforts to pressure the Crown. Anishinabek Chiefs, Shingwakonce and Nebengoching, hired a lawyer, Allan Macdonell, and in late June 1849, travelled with him to Montreal, to again petition the Governor General. Shingwakonce repeated the claims in his former petitions and called for compensation for lands occupied by the miners.
42. The Chiefs returned to the Sault and Macdonell remained behind in Montreal. Macdonell received assurances from the Crown that the Indian claims would be adjusted as soon as possible.

1849 – The Vidal Anderson Commission

43. Anderson's initial report was not sufficiently complete to propose terms to the Indians, so Lord Elgin ordered a second commission. On August 4, 1849, the Crown, by Order in Council, commissioned Alexander Vidal and Thomas G.

Anderson to meet with the Anishinabek along the shores of Lake Huron and Lake Superior and investigate their claims, estimate their populations and obtain their expectations and provide a full report on their findings. The Order in Council provided that the Indians be given assurances that the Crown wished to remunerate them in an equitable manner for the relinquishment of their claims proven to exist.

44. Vidal and Anderson were instructed to identify the rewards and presents the Indians were receiving from the Imperial or Colonial government. They were also specifically instructed to assure the Anishinabek that the Crown would consider their interests and protect their rights but that they were only to deal directly with the Crown and not with third parties with respect to settling claims for their land.
45. It was in the late summer when Vidal Anderson Commission finally got underway. They arrived in the Sault in mid-September of 1849, and from there travelled up to Fort William. From Fort William, the Commissioners travelled back by boat or canoe along the north shores of Lakes Superior and Huron, to Penetanguishene conducting meetings with Anishinabek representatives along the way. The Vidal Anderson Report was issued on December 5, 1849.
46. In their Report to the Crown, Vidal and Anderson confirmed that the Anishinabek did have good title to their land and that it would be necessary to sign a treaty in order for the Crown to obtain title to the land:

The claim of the present occupants of this tract, derived from their forefathers, who have from time immemorial hunted upon it, is unquestionably as good as that of any of the tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitles them to similar remuneration, should the Government require the surrender of the whole or any portion of the lands....

47. The Vidal-Anderson Commission Report indicated that there was a "general wish expressed by the Indians to cede their territory to the government provided they

are not required to remove from their present places of abode, their hunting and fishing not interfered with and that compensation given to them be a perpetual annuity". The Commissioners noted a lack of capacity on the part of the Indians to negotiate for themselves.

48. With regard to the amount of the perpetual annuity, the Commissioners noted that the amounts asked for by the Indians was high: "one of their chiefs demanded as compensation thirty dollars, another sixty, and another a hundred per annum, for every man, woman and child for ever."

49. Vidal and Anderson indicated that while their incapacity rendered it necessary for the Crown to fix the terms, it also, "entitles the Indians to the most liberal consideration and scrupulous avoiding any encroachment on their rights." This provided the rationale for the suggestion of including an escalator clause in a possible treaty with the Anishinabek. The Report stated:

It will not be easy to ascertain the actual value of this vast but sterile territory, on account of its being so little known, but while making terms in accordance with present information of its resources, provision might be made if necessary, for an increase of payment upon the further discovery and development of any new sources of wealth.

50. William Benjamin Robinson had the Vidal Anderson Report on hand with him when he negotiated the Robinson Treaties. In his Report, Robinson said he found the Vidal and Anderson Report of much use.

51. Shortly after Vidal and Anderson had completed their investigation, around November 9-10, 1849, the Mica Bay Incident occurred. The Incident involved Anishinabek Chiefs Shingwakonce and Nebenaigoching, their lawyer, Allan Macdonell and others taking steps to evict miners of the Quebec Mining Company's mine at Mica Bay on Lake Superior, north west of Sault Ste. Marie. They stopped the miners because there was no treaty, and they considered them trespassers in violation of Anishinabe law and the *Royal Proclamation of 1763*.

52. The Anishinabek were displeased with the continued violations of their land rights and the failure of the Crown to address their grievances. Many had thought that the Vidal-Anderson Commission was mandated to negotiate a treaty and they were disappointed to find out that they were there to carry out more investigation. Meanwhile mining activities continued, which added to Anishinabek suspicion, anger and unrest.
53. A detachment of soldiers was ordered to the Sault, setting-off from Toronto on November 19, 1849. The troops made it as far as Sault Ste. Marie, but apparently never made it to Mica Bay. The incident ended without violence. The leaders of the Mica Bay incident turned themselves in and were charged with riot and forcible entry and subsequently sent to Toronto to be tried. Their charges were initially dismissed in early December 1849 and were re-laid. The trial was set for May 1850; but it was put over until October 1850. The charges were outstanding at the time of the Robinson Treaty Council in September of 1850. They were eventually stayed in May 1851.
54. The Chiefs who remained in Toronto after their charges were re-filed, wanted to return to the Sault and sought financial assistance from the Crown to do so. William Benjamin Robinson, a member of the opposition in the Legislative Assembly, was approached and agreed to intercede on behalf of the Indians. Robinson was acquainted with Chief Shingwakonce and the Anishinabek because of his involvement in mining activities in the area. He wrote a letter to Superintendent General of Indian Affairs, Robert Bruce, on January 10, 1850, offering to help settle the matter.
55. On January 11, 1850, a Committee of the Executive Council recommended that Robinson be authorized to negotiate what would become the Robinson Treaties. The Committee also recommended 100 pounds be advanced to the Chiefs to enable them to return home. Governor General Lord Elgin approved the recommendation on the same day.

56. The Mica Bay incident, in addition to the overall increase in mining activity within the Treaty area, accelerated the Crown's decision to negotiate a treaty with the Anishinabek for title to their traditional lands.

Robinson Huron Treaty Commission

57. In response to the question regarding rewards and presents the Indians were receiving from the Imperial or Colonial government, the Vidal-Anderson Report noted that the majority of Lake Huron Indians were receiving presents, but that these were gratuitous and not as compensation for the surrender of title.
58. In the years and months prior to the Robinson Huron Treaty negotiations both the British Imperial Government and the colonial government were making a concerted effort to terminate the distribution of Indian Presents. In carrying out the negotiations of the Robinson Huron Treaty, Commissioner Robinson was specifically instructed not to discuss the annual distribution of Indian Presents to the Anishinabek. As a result, the discontinuation of the Indian Presents was not factored into the negotiations of the Robinson Huron Treaty.
59. The Indian presents were an important obligation of the Crown under Anishinabe law and the Treaty of Niagara of 1764. The conduct of the Crown in failing to inform the Robinson Huron Treaty Anishinabek that the Presents were being eliminated, created expectations of continued Crown good faith and compliance with its obligations, namely the continuation of the annual Indian presents, in addition to increased Treaty annuities.
60. The distribution of Indian Presents was subsequently reduced and then cancelled shortly after the 1850 Treaty was signed. Under the terms of the Robinson Huron Treaty, the Anishinabek beneficiaries initially received a Treaty annuity of 600 pounds a year which, divided amongst the beneficiaries, was approximately 0.42 pounds. The currency exchange at the time was roughly 4:1, as such the

amount in dollars was approximately \$1.70 per person. This amount was later increased to four dollars per person.

61. The value of the Indian Presents at the time was approximately the equivalent of one pound currency, or approximately four dollars per person.

Robinson Treaty Negotiations

62. Robinson's official instructions are contained in an Order in Council dated April 16, 1850. The instructions provided that Robinson had 7,500 pounds of circulable money to work with, which was the amount of money received from mining locations. According to the Instructions, the most desirable form of remuneration was a perpetual annuity; that Robinson should consider himself limited by a capital amount of 25,000 pounds, the interest of which, payable as a perpetual annuity, would be 1500 pounds. The instructions also provided three options for the cession of Indian title: that Robinson was to try and "negotiate an extinction of Indian title" to the whole territory on the north and north-eastern coasts of Lakes Huron and Superior; but if that was not possible, then to try and get a cession of the territory as many miles inland from the coast as possible; and if it was impracticable to get a cession of the entire coasts, then he should negotiate for the north-eastern coast of Lake Huron and such portion of the Lake Superior coast as covers the mining locations at Mica Bay and Michipicoten.
63. William Benjamin Robinson made a preliminary trip to Sault Ste. Marie at the end of April 1850. He held a Council meeting on May 1, 1850 with Shingwakonce and a number of First Nation Chiefs at Garden River and advised them of his plans to negotiate a treaty with all of the Lake Huron and Lake Superior chiefs after the issue of Indian Presents in August. Robinson suggested holding the council at Manitowaning, but this was rejected on the basis that the Lake Superior Chiefs would think this too far, so it was agreed that the treaty council would be held at Sault Ste. Marie. In the meantime, the Chiefs promised not to interfere with mining operations. Robinson also arranged for notice to be sent to

chiefs who were not in attendance, via Hudson's Bay Company agents or other knowledgeable persons such as Superintendent George Ironside.

64. On his second trip, Robinson left for Sault Ste. Marie on August 14, 1850, stopping at Manitoulin Island after the distribution of Indian Presents. He arrived in Sault Ste. Marie on August 18, 1850, and had some initial meetings with local and visiting chiefs. The Superintendent General of Indian Affairs, Col. Robert Bruce, arrived on August 25th. Together they spent until August 30th, visiting Lake Superior and Sault Ste. Marie Chiefs. Bruce departed on the 30th, and on the same day his brother, Governor General Lord Elgin, arrived at the Sault.
65. The procedures for treaty-making were well established and known by all sides at the Treaty Council; they were also set-out in the Dorchester Regulations. There is no doubt that the Treaty Council followed the established procedures, in conformity with British and Anishinabe laws, customs and usages. The Council was formally initiated by the Governor General on September 1, 1850. On that day, Lord Elgin and Robinson had a meeting with the Lake Superior delegation. They met with the Lake Huron delegation on September 3rd. At both sessions, Lord Elgin assured the Indians that Robinson was vested with full authority to settle the matter. The Governor General departed on September 3, 1850.
66. The Treaty Commissioner opened the business-portion of the Treaty Council at 11:00 AM on September 5th, at the site of the Hudson's Bay Company warehouse in Sault Ste. Marie. Both Lake Superior and Lake Huron Anishinabek delegations were in attendance. According to Robinson's Report, there were twenty-one chiefs and about the same number of principal men present at the Treaty Council. However, most of these would have been from the Huron area because only four chiefs and five principal men signed the Robinson Superior Treaty. There were also a number of Indians, who were neither chiefs nor principal men present, from the various bands mainly from the Sault area.

67. The Crown's delegation was led by Robinson and also included a number of other individuals who played a supporting role. These included Indian Superintendent George Ironside and his associate, the aged Odawa War Chief J.B. Assikinack, George Johnston, the official interpreter, and Joseph Wilson, customs collector at Sault Ste. Marie. Robinson also retained J.W. Keating, a former Indian Department employee who was involved in resource development in the region, to assist him at the Council apparently because of his knowledge of Anishinabemowin -- the Anishinabe language -- and familiarity with the area. The military was in attendance on behalf of the Crown. There were also representatives of the Hudson's Bay Company present: the Company had played a role in giving notice and provisioning the Treaty Council and later assisted in distributing treaty monies.
68. The Treaty Council was conducted in English. Since Shingwakonce and most of the Anishinabek could not speak English, they were at a distinct disadvantage in the treaty negotiations. They had to rely on interpreters. Thus, key legal concepts in the negotiations had to be translated to and from Anishinabemowin.
69. On September 5, 1850, Robinson presented his proposal: 16,000 dollars (4,000 pounds) in specie (cash) and a perpetual annuity of 1,000 pounds, together with reasonable reservations and free use of all the territory ceded for hunting and fishing. He explained the benefits of a perpetual annuity. The Lake Superior Anishinabek in attendance, who eventually signed the Robinson Superior Treaty, expressed their satisfaction with Robinson's proposal. Shingwakonce said he wanted to consider the proposal overnight.
70. On September 6, 1850 the Treaty Council was reconvened and Chief Shingwakonce provided his terms, which included an annuity of \$10 per head forever and a reserve for his people of 15 miles frontage on Lake Huron. The \$10 was much higher than the \$1.00 to \$2.00 per head annuity Robinson was offering. Robinson said that he could not agree to so high an annuity and again

emphasized that the Indians would have the same privileges as ever of hunting and fishing over the whole territory.

71. According to his Report to Col. Bruce, Superintendent General of Indian Affairs, dated September 24, 1850, Robinson attributed opposition to his proposal to two things. He blamed "interested parties" who were advising the Indians to insist on "extravagant terms", an obvious reference to lawyer Allan Macdonell. He also attributed the opposition to the "fact that the American Government had paid very liberally for the land surrendered by their Indians on the south side of Lake Superior, and that our own in other parts of the country were in receipt of annuities much larger than I offered."

72. To support his proposal and to counter the Shingwakonce proposal, Robinson explained the differences between the subject lands and lands previously ceded in the Province, which justified the higher compensation:

... they were of good quality and sold readily at prices which enabled the Government to be more liberal. They were also occupied by the whites in such a manner as to preclude the possibility of the Indians hunting over or having access to them: whereas the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by Mining Companies, whose establishments among the Indians instead of being prejudicial would prove of great benefit as they would afford a market for any things they may have to sell and bring provisions and stores of all kinds among them at reasonable prices.

73. Robinson's Report also referred to another argument made to counter Shingwakonce. To underline the advantage of his proposal, he set out two options: (1) payment of a lump sum equivalent to the amount of money received from mining locations in the territory, approximately 8,000 pounds, and a promise of accounting for future sales, but with no annuity or certainty of further benefit; or (2) one half of it down (\$4,000) plus an annuity of \$1,000. The options broadly

reflected the range afforded to the Treaty Commissioner by his mandate, the first option being the partial cession referred to therein.

74. To provide further incentive for the Chiefs to accept his proposal, Robinson improved his offer by adding the augmentation clause, which in effect provided the Anishinabek an opportunity to share in future resource revenues from the territory. This had been recommended in the Vidal-Anderson Report. The rationale for the clause is also noted in Robinson's Report to Col. Bruce:

Believing that His Excellency and the Government were desirous of leaving the Indians no just cause of complaint on their surrendering the extensive territory embraced in the treaty and knowing there were individuals who most assiduously endeavoured to create dissatisfaction among them, I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity. This was so reasonable and just that I had no difficulty in making them comprehend it, and it in a great measure silenced the clamor raised by their evil advisors.

75. Robinson's Diary for September 6, 1850, notes that because the majority indicated their support for a perpetual annuity option, he would prepare the treaties and bring them back for signing the next day. Robinson decided to proceed with two treaties: what became known as the Robinson Superior Treaty and the Robinson Huron Treaty. Shingwakonce and Nebenaigoching were included in the Robinson Huron Treaty, even though their territories overlapped Lake Superior lands. The Superior chiefs, other than Shingwakonce and Nebenaigoching, who agreed with Robinson's terms, were treated with separately. Accordingly, Robinson spent that evening and the following morning, preparing the Robinson Superior Treaty. He had a separate meeting with them on the morning of September 7th, at which he presented the draft treaty. These Superior chiefs approved the terms and Robinson convened the full Treaty Council.

76. The full Treaty Council convened on September 7, 1850, at around 11:30 am. Robinson presented two copies of the proposed Robinson Superior Treaty, which was then signed by the Chiefs and Principal Men of the Superior area in attendance. The Treaty provided for a lump sum payment of 2,000 pounds and a further perpetual annuity of 500 pounds. Chief Shingwakonce repeated his position on the higher annuity; but, Robinson also maintained his position, because a majority appeared to favour his proposal. He concluded by saying that he would prepare the Robinson Huron Treaty along the same lines as the Superior Treaty and those that favoured it could sign it. The Council adjourned and Robinson spent the rest of the day and September 8, 1850, drafting the Robinson Huron Treaty.

Robinson Huron Treaty of 1850

77. Robinson returned to the Treaty Council on September 9, 1850. He explained the content of the proposed treaty to the Lake Huron Anishinabek Chiefs and Principal Men, who were satisfied and ready to sign. Shingwakonce and Nebenaigoching, who arrived later in the day, initially refused to sign, insisting on the higher annuity of \$10 per head, but then relented. They were the first to sign and the other Chiefs and Principal Men followed. Robinson signed, on behalf of Her Majesty the Queen. The terms, almost identical to the Robinson Superior Treaty, provided for a 2,000 pound lump sum payment and a further perpetual annuity of 600 pounds.

78. The annuity clause in the Robinson Huron Treaty provides as follows:

the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose...

Augmentation Clause

79. The Robinson Huron Treaty also contains the following annuity augmentation clause:

The said William Benjamin Robinson, on behalf of her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees, that should the Territory hereby ceded by the Parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial Currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two-thirds of their present number, which is fourteen hundred and twenty-two, to entitle them to claim the full benefit thereof. And should they not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.

80. On his way back after the Treaty Council in Sault Ste. Marie, Robinson stopped at Manitoulin on September 13, 1850. He then went on to Penetanguishene, where on September 16, 1850, with the assistance of T.G. Anderson, he held a Treaty Council with the Chiefs and Principal Men of the Shawanaga and Parry Island First Nations, who adhered to the Robinson Huron Treaty. A further sum of 160 pounds was added to the lump sum to cover the adhesion.
81. The Robinson Treaties were ratified and confirmed by the Governor General in Council in November 1850.
82. The full written text of the Robinson Huron Treaty of 1850 is set out at Schedule "A" to this Statement of Claim.

Treaty Payments

83. As per the terms of the Robinson Huron Treaty, the 2,000 pound lump sum payment was divided up and distributed to the treaty beneficiaries via signatory Chiefs, Principal Men and heads of families after signing. Robinson paid Nebenaigoching's band at the Hudson's Bay Company store in the Sault on September 10, 1850. He went to Garden River on September 11th and paid the bands in the area, including Shingwakonce's, Kewekonce's and Naoquagabo's bands. Robinson then stopped at Manitoulin Island on September 13th and distributed treaty payments to the rest of the north shore, French River, Lake Nipissing and Georgian Bay bands.
84. At the time of the Treaty there were 1422 treaty beneficiaries in the Robinson Huron Treaty territory by Robinson's estimation. The 2,000 pounds, divided among the Lake Huron Anishinabek would have yielded a share of about 1.4 pounds per person or about \$5.00. The payments were made in American silver half-dollar coins.

SUBSEQUENT EVENTS

Perpetual Annuity Payments

85. Payment of the perpetual annuity came due in 1851, and was initially paid out to the "Chiefs and their Tribes" in the form of goods rather than cash, roughly equal to the value of the annuity provided for in the Treaty. From 1851 to 1855 the beneficiaries of the Robinson Huron Treaty received their annuities in July and August at Manitoulin Island and Penetanguishene, at the same time as the Indian Presents were being distributed. Starting in 1856, the Crown proceeded to make treaty annuity payments in cash.
86. The perpetual annuity payment of 600 pounds divided by Robinson's estimated population of 1,422, resulted in a share per individual of 0.42 pounds or

approximately \$1.70 per person. This was the value of the annuity initially paid out to Robinson Huron Treaty beneficiaries via their chiefs and heads of families.

87. However, it soon became apparent after the Treaty was signed that Robinson had seriously under-estimated the population of the Robinson Huron Treaty Anishinabek. Superintendent General Col. Bruce ordered a new census to be carried out by the Indian Department. Superintendent Ironside carried out the new census in 1856. The new numbers resulted in the individual share of annuities dropping to about \$1.10 per person. By 1875, the value of the annuity further dropped to between 92 - 95 cents per individual.

Elimination of Indian Presents

88. Shortly after the Treaty signing, Indian Presents were also in the process of being eliminated by the Crown. The full value of the Presents, approximately one pound, or \$4.00 per person was continued until 1853. Thereafter the value of the Presents was reduced by one-quarter every year, until they were totally eliminated in 1857. The Indian Presents were an extremely important source of income in kind for Robinson Huron Treaty Anishinabek households, and almost invariably the only source of clothing. So, the elimination of Indian Presents was cause of great concern and dissatisfaction amongst the Anishinabek and all First Nations.
89. The rationale provided by Superintendent General Col. Bruce for the elimination of the Indian Presents was that the Indians were now in more prosperous circumstances, in possession of rich and productive lands and considerable revenues, including annuities. This was certainly the Crown's intention behind the perpetual annuity and augmentation clause; however, it was not bearing true for the Anishinabek in the period shortly after the signing of the Robinson Huron Treaty, particularly in light of the diminishing per person value of annuities.

Anishinabek Complaints About the Annuity

90. The Anishinabek Chiefs began to express their concerns very soon after the Robinson Treaties were signed based on the small amount of annuity being received by each band member. One such complaint was noted by Keating in a meeting with the Michipicoten band in 1853. And although Shingwakonce died in 1854, treaty concerns were taken-up by his successors and other Robinson Huron Treaty Chiefs and Principal Men.
91. In 1856, the Governor General in Council appointed R.T. Pennefather, F. Talfourd and T. Worthington as Special Commissioners to Investigate Indian Affairs in Canada. Talfourd and Worthington, reporting on their visit to bands in the Robinson Huron Treaty area in 1857, noted that they had received repeated complaints about annuities and the discontinuation of the Indian Presents. The official Report of the Special Commissioners dated 1858, under the heading "Scattered Bands of the Northern Shores of Lake Huron and Superior", acknowledged dissatisfaction amongst some of these Indians at the smallness of the annuity and noted regret at the comparatively nominal sum of money had been paid to the Indians for such a vast extent of country. However, the report also indicated that "enquiries at the Crown Land Department shew that no increase in the annuity is yet warranted", though no documentation was provided to support this finding.
92. Another complaint was reported on September 3, 1858, by Richard Carney, Commissioner of Indian Lands, appointed under *An Act for the protection of Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury* (1850), as amended. Carney was reporting on a meeting with the Garden River band in a letter to Superintendent General of Indian Affairs, R.T. Pennefather. In his letter, he noted that the band complained that they had only received 75 cents per person as an annuity the year before. In response, he said he explained the operation of the augmentation clause under the Robinson Huron Treaty and that an increase was dependant on sale of lands.

Carney emphasized to Pennefather that the augmentation clause was an important condition of the Treaty. He noted that the Indians had never been provided with an accounting, and also that the proposed sale of surrendered lands by Crown Land Department at discounted prices was inconsistent with the augmentation clause. Carney advised that he considered it his duty to raise these points with the Superintendent General as "Trustees to administer the Indian affairs for their profit and not to suffer any advantage to be taken of them."

Anishinabek Petitions Regarding Augmentation Persist After Confederation

93. Anishinabek concerns about their Treaty annuity persisted after Confederation in 1867, but inevitably became caught up in the division of powers debate between the federal and provincial governments and the protracted arbitration and litigation over pre-Confederation debts and liabilities.

94. In a memorial to the Governor General signed at Garden River on June 12, 1869, and at Little Current on Manitoulin Island on July 24, 1870, the Robinson Huron Treaty Anishinabek raised their claim to augmented annuities and expressed concern that the free grant of lands to settlers would diminish their entitlement to augmentation. Similarly, in early 1873, the Robinson Superior Anishinabek petitioned the Governor General, objecting that the augmentation clause had not been carried out. Simon J. Dawson, Commissioner of the Dawson Road from Lake Superior to the Red River, and Treaty 3 Commissioner, took up the cause in 1873. In a letter dated April 7th, he transmitted to the Governor General the memorial he had received from the Lake Superior Anishinabek. His letter made reference to the longstanding objections of the Indians to the smallness of the annuity, and makes specific reference to the augmentation clause. Noting that as a result of Confederation, the federal government was responsible for the Indians, but that the lands passed to the province, Dawson argued that Ontario was benefiting from steadily increasing resource revenues and that at minimum,

an increase to \$4.00 and probably more was now warranted. He also argued for back-annuities since 1850, or at least since 1867.

Crown Steps Towards Increasing the Annuity

95. The Anishinabek petitions worked their way through the system. On April 12, 1873, Deputy Superintendent General of Indian Affairs, William Spragge, wrote a memo concerning the Robinson Treaties annuity issue, noting that the Huron Anishinabek were getting \$1.10 per head and the Superior Anishinabek were getting \$1.49 1/2. He recommended that before anything could be done, a statement of revenues would have to be obtained from Ontario. On April 13th Governor General Lord Dufferin, sent a note to his Executive Council, regarding the petitions, saying he was strongly of the opinion that it ought to be ascertained whether the petitioners were entitled to claim an increase in their annuity. On July 9, 1873, an Order in Council was passed directing that communications be initiated with Ontario on the matter.
96. On June 17, 1874, Minister of the Interior and Superintendent General of Indian Affairs, David Laird, wrote a memo to the effect that the annuity should be increased; that Ontario was liable to pay and that the Secretary of State communicate with the Lieutenant Governor of Ontario. An Order in Council was passed on June 19, 1874, approving Laird's suggestions and a despatch was sent by the Under-Secretary of State in August 1874.
97. The Premier and Attorney General for Ontario, Oliver Mowat, drafted a memo on October 14, 1874, acknowledging that revenues warranted an increase in the annuities, but argued that it was a federal and not provincial responsibility. Moreover, he suggested that the question be referred to the Court of Chancery and the Dominion pay, with final liability to be decided later. Mowat's memo was adopted by Order in Council, which also authorized it to be forwarded to the Secretary of State and the Governor General in Ottawa.

98. In 1874, Liberal MP for Algoma, E.B. Borron, had also taken up the cause of the Robinson Treaty Anishinabek regarding annuity augmentation, with the Minister of the Interior, David Laird. In a letter dated April 1, 1875, he acknowledged the delay in getting statements from Ontario and that the issue of arrears would have to be delayed. However, he wrote that the Indians should get an immediate increase to \$4.00 because they were suffering great hardship and that it would be cruel to delay payment of the increased annuities.

99. The federal Minister of Justice, Edward Blake, stated his opinion on the matter in a memo dated July 7, 1875. After reviewing the augmentation clause and other information he concluded that as at Confederation in 1867, an augmentation was "properly claimable", and also that there was no doubt that an augmentation to \$4.00 per head had been claimable for some time prior to 1867. Blake noted that Ontario agreed with the augmentation but disagreed with who was liable. Therefore, he proposed that Canada pay it, leaving the question of liability to be determined later. He also suggested that the issue of arrears be postponed. On July 12th, Minister Laird issued a report expressing his agreement with Blake's opinion; and on July 22, 1875, the Executive Council recommended approval of Laird's Report.

Annuities Increased to \$4.00 and the Issue of Arrears

100. Thus, the Robinson Treaties annuities were increased to \$4.00 per person per year starting in 1875. However, this did not include any arrears, which was an issue that continued to be raised by the Anishinabek. In November 1877, Algoma MP E.B. Borron, sent a petition signed by Nebenaigoching and Shinwakonce's son, Ogista, the Head Chief at Garden River, along with others, requesting arrears and interest from the date of the Treaty in 1850, insisting that the Treaty territory had generated sufficient funds.

101. On the issue of arrears, in September 1877 Deputy Minister of the Interior, E.A. Meredith, wrote to the Ontario Assistant Commissioner of Crown Lands, Thomas

Johnson, asking for a statement showing the annual net proceeds from lands and resources sold in the Robinson Treaty territories beginning in 1850. Initially, Ontario indicated that it could provide this information for the Robinson Superior area, but not for the Robinson Huron area because of uncertainty regarding the Treaty boundary, particularly on the eastern side. This was clarified in October 1877, when Meredith advised that the eastern boundary was "considered to be a line running southward, striking the east shore of Lake Nipissing and extending to a point due east from Moose Deer Point."

102. Meredith repeated the request for a statement of net revenues several more times, but to no avail. Finally, in February 1879, the Governor General in Council sent a formal despatch to the Lieutenant Governor asking for the statement of revenue and expenditures for the surrendered territories under the Robinson Treaties, from 1850 "to the date that the net annual proceeds exceeded the amount of \$4.00 for each of the Indians entitled to receive annuity under the said Treaties". Ontario finally sent the statements on April 15, 1879, for the period 1850 to 1877.
103. In 1879, Ontario Commissioner of Crown Lands, T.B. Pardee, reported that revenue from Crown lands was diminished as a result of free land grants, among other things.
104. In 1881, Simon J. Dawson, now an MP for Algoma, transmitted another petition to the Governor General from the Fort William Band claiming arrears. He sent a lengthy cover letter quoting the augmentation clause and arguing that payment of arrears was warranted for both Lakes Huron and Superior, from at least 1854 and 1855. He, estimated that the total revenue for the period from 1855 until 1875, for both Treaty territories, to be approximately \$1.3 M, which he claimed ought to have yielded \$209,608 plus interest at 5%, for a total of \$319,762. Dawson also made reference to the fact that the Robinson Treaties stipulated not just for \$4.00 per head, but also "for such further sum as Her Majesty may be graciously pleased to order." He also challenged Ontario's charges for the

expense of surveys against mining revenue stating that the cost of surveys was borne by mining companies.

Federal-Provincial Negotiations on Augmentation of Annuities

105. From 1882, federal-provincial exchanges and negotiations occurred between the Dominion of Canada and the Provinces of Ontario and Quebec in an attempt to resolve the Robinson Treaty annuity augmentation issue. Indian Affairs Deputy Superintendent General Vankoughnet, in 1882, set-out the Indian Department's position on the augmentation issue: that the old Province of Canada was liable for annuities and interest from 1851 to 1867; and after 1867, the provinces were liable for annuities and interest; that the Indians were entitled to payment of arrears for the period from 1851 to 1874, plus interest; and that Canada was entitled to be reimbursed for the augmented annuities from 1875 to 1882, plus interest. In the negotiations, Canada considered the Robinson Treaty Anishinabek claims to arrears to be valid and that the net revenues were likely considerable. Moreover, Vankoughnet made it clear, at least initially, that Canada was pursuing augmentation not just up to the level of \$4.00 per head, but also to such further sum as Her Majesty might think proper.
106. The Provinces took issue with Canada's position on all points. They argued that the annuities were capitalized at Confederation, at \$88,000, and Canada could not reopen the deal. Ontario also incorrectly asserted that the Indians only claimed an increase in 1873, so were not entitled to arrears prior to that. The Provinces also disagreed with the payment of interest on arrears.
107. However, there were two principal areas of contention in the negotiations, both of which affected the size of the debt or liability. One was the number of annuitants. This was because the negotiations eventually came to focus on \$4.00 per capita as a main factor in the augmentation and correspondingly, on the size of the debt or liability. The actual number of Treaty annuitants, especially in the Robinson Huron Treaty, was considerably higher than the numbers noted by Robinson in

1850. The Provinces argued against the increased numbers. The second dispute involved the calculation of net revenue from the Treaty territories, particularly the expenditures. The Provinces argued for an expanded set of expenditures and amounts, which Ontario claimed exceeded receipts overall.

108. The parties could not resolve these issues, so the matter was put to arbitration, along with a number of other outstanding federal-provincial Confederation issues.

Arbitration, Arrears and a Federal-Provincial Deal

109. There were two sets of arbitrations, which bear on the Robinson Treaty annuities. The first involved the division and adjustment of pre-Confederation debts, credits, liabilities, properties and assets of Upper and Lower Canada and was conducted pursuant to section 142 of The British North America Act, 1867 ("BNA Act). By the operation of sections 111 and 112 of the BNA Act, 1867, Canada was liable for debts of the old Province of Canada up to \$62.5 M; Ontario and Quebec were jointly liable for any excess, subject to interest at 5% per annum. As at Confederation, the total debt of the old Province of Canada was \$73.0 M. Included in this amount were the Robinson Treaty annuities of \$4,400, which were capitalized at \$88,200. This was shared, according to the ratio established by the Arbitration ruling of 1870 for excess debt – approximately 53 % by Ontario and 47% by Quebec.

110. The second round of arbitrations started in 1890-91 pursuant to agreement and matching legislation between Canada, Ontario and Quebec, and involved excess debts that came to light after 1867. This included annuities augmented under the Robinson Treaties.

111. The Arbitration Award of February 13, 1895, established a set of conclusions, which subsequently served as a basis for settlement between Canada and the Provinces of Ontario and Quebec on the Robinson Treaties Annuities issue. One of these conclusions was that Ontario owned the Treaty territory pursuant to

section 109 of the BNA Act, 1867, subject to a trust to pay the increased annuities after 1867, if it could without incurring loss. This part of the Award was eventually reversed by the Supreme Court of Canada, in a decision that was upheld by the Judicial Committee of the Privy Council. The decisions of the Courts also upheld the conclusion that Ontario and Quebec were conjointly liable for the debts of the old Province of Canada as excess debt under section 112 of the BNA Act, 1867. The other conclusions of the Arbitrators remained intact.

112. The remaining conclusions in the February 13, 1895 Award, included the following: that if the Treaty territories generated net revenue from 1850 onwards, beneficiaries were entitled to an augmentation not exceeding \$4.00 per person; if the population increased after 1850, all were entitled to \$4.00 as long as it did not result in a loss; excess revenue in one year could not be applied backward into a former year; and no interest was to be paid on arrears of increased annuities.
113. After the appeals determined conjoint liability by Ontario and Quebec, the Dominion of Canada filed a claim against both Provinces and went back to Arbitration on the matter. The Arbitrators upheld Canada's position in a ruling dated January 7, 1898. The Arbitrators also established a framework for determining beneficiary entitlement under the Robinson Treaties, based among other things on $\frac{1}{4}$ blood quantum. They also ruled that prior to 1867 it was the responsibility of the Anishinabek to show that names had been improperly left off the list; and that Canada had the burden of proving entitlement regarding any additions after 1867. Moreover, they ruled that entitlement could not be precluded by federal legislative definition. Finally, the Arbitrators also provided a list of 14 heads of expenditure, to be used to calculate net revenue, but did not provide specific amounts.
114. The Robinson Huron Treaty Anishinabek were not consulted by either Canada or the Provinces regarding the arbitration. They did not participate, and were not represented by counsel, at either the first or second round of arbitrations.

115. The Arbitration Awards and Court rulings formed the parameters by which Canada, Ontario and Quebec eventually came to a settlement, as between themselves, regarding the Robinson Treaty annuities issues. Canada, Ontario and Quebec eventually made a deal that served their respective interests, which was confirmed by matching Orders in Council in December 1899. The basic deal was that Canada agreed not to challenge provincial expenditures if the Provinces agreed not to challenge Canada's Treaty population figures. On this basis, for arrears of augmented annuities from 1851 to 1874 and for Canada's payments of augmented annuities from 1875 up to and including 1892, it was agreed that \$17,232 was due under the Robinson Superior Treaty and \$95,768 was due under the Robinson Huron Treaty. With regard to augmented annuities for the Robinson Huron Treaty on a go-forward basis, a capitalized amount of \$202,000 was agreed upon, which was calculated using \$4.00 per person, and a static ongoing projected population of 2650. This was to be shared conjointly by Ontario and Quebec and they were relieved of paying any further annuities.
116. This agreement was confirmed by the Arbitrators in a final award dated August 1, 1900.
117. Under this agreement, Robinson Huron Treaty Anishinabek were given a one-time payment for arrears without interest, for the period from 1851 to 1874, in the amount of \$3.00 per person. This was paid out in 1904.
118. The Robinson Huron Treaty Anishinabek were not consulted by Canada or the Provinces in the negotiations. They did not participate, and were not represented by counsel, at any of the above-noted negotiations.
119. The Robinson Huron Treaty annuities were not augmented beyond the level of \$4.00 per person, even though it was apparent from the accounts provided in the course of the negotiations and arbitrations that the annuities could be further augmented without incurring loss.

Crown Conduct Regarding Annuities Since 1892

120. As aforesaid, in the course of the arbitrations and federal-provincial negotiations regarding responsibility for the perpetual annuity under the Robinson Treaties, the Crown parties focussed attention on the per capita calculation and the size of the Treaty beneficiary population. There was pressure to reduce the beneficiary numbers to reduce the overall cost of the perpetual annuity. As a result, in the period after approximately 1897, Canada embarked on a process of unilaterally removing individuals from Treaty pay-lists or declaring their annuity entitlement to be non-transmissible. This was contrary to the principle that the Robinson Huron Treaty Anishinabek could determine beneficiary entitlement according to their own customs and laws.
121. No accounting has ever been provided by the Crown to the Robinson Huron Treaty Anishinabek, although Ontario provided certain accounts to Canada for the period up to 1892. The Plaintiffs currently receive an annuity of four Canadian dollars per head, roughly equivalent to the sum of one pound provided for in the Treaty, the same amount the Plaintiffs' ancestors were receiving in 1875.
122. At no time did the Crown ever provide for an increase in the base annuity beyond the one pound (four dollars), despite the fact net revenues from the Treaty territory supported an increase in the annuity as per the terms of the Treaty.

Taking-up of Robinson Huron Treaty Lands – Settlement, Exploration and Development

123. The Robinson Huron Treaty Territory has been considerably taken-up since the signing of the Treaty in 1850. The Robinson Huron Treaty Anishinabek were not meaningfully consulted by the Crown with regard to the taking-up of those lands.

Nor were they accommodated, as provided in the Treaty, by way of being paid a fair share of resource revenues as promised by Robinson in 1850.

124. Crown resource revenues generated within the Treaty territory have significantly increased since the Treaty was originally signed in 1850. As such the Crown has benefited from those revenues from the territory generated directly and indirectly as a result of, inter alia, Crown land sales, leases and licences; resource development activities, including forestry, mining, hydro and commercial fishing; as well as parks and recreation, including hunting and fishing.
125. Ever increasing timber activity in addition to intensive mining activity in the territory has provided the Crown with an escalating stream of revenue well beyond what was being produced in the Treaty territory in 1850.
126. A significant proportion of the forestry and mining activity in Ontario has occurred and continues to occur within the Treaty territory, with little or no benefit accruing to the Robinson Huron Treaty Anishinabek.
127. Despite this massive increase in revenues generated within the Treaty territory, the annuity paid to the beneficiaries remains at one pound, that is, \$4.00 per person, per year, which does not conform to the spirit or intent of the original terms of the Treaty.

Crown Restrictions on Anishinabek Timber Sales and Fishing and Hunting

128. The Crown has over the years since the signing of the Treaty restricted Anishinabek participation in forestry activities and timber sales. It has also steadily restricted fishing and hunting rights of the Anishinabek, contrary to the promises made by Robinson at the Treaty negotiations. This has resulted in greater economic needs and heightened the importance of annuity augmentation under the Treaty.

CROWN BREACHES

Breach of Treaty

129. The Treaty is enforceable by the Plaintiffs against the Defendants as a *sui generis* agreement embodying both Anishinabe law and common law, which was solemnly entered into between the Robinson Huron Treaty Anishinabek and the Crown with the intention of having legal effect. Post-1982, the Robinson Huron Treaty has constitutional force and is part of the supreme law of the land pursuant to sections 35(1) and 52(1) of the *Constitution Act, 1982*. Accordingly, the entitlement to a perpetual annuity and its augmentation are Aboriginal and Treaty rights that are recognized and affirmed pursuant to section 35(1) of the *Constitution Act, 1982*.
130. The annuity augmentation clause in the Treaty, which was intended to respond to Robinson Huron Treaty Anishinabek expectations, and is expressly based on the desire of the Crown to deal liberally and justly with the Anishinabek, has not been fulfilled. In this regard, the Crown has breached the Treaty, inter alia, as follows:
- a) By failing to increase the collective amount of the perpetual annuity to the sum of one pound or more for each individual prior to 1875;
 - b) By failing to act liberally and justly to increase the collective amount of the perpetual annuity beyond one pound per individual and in such an amount that reflected the increasing and substantial revenues being generated within the Treaty territory from 1875 until the present;
 - c) By failing to increase the collective amount of perpetual annuity payable to the Robinson Huron Treaty Anishinabek to reflect a share of resource revenues from the Treaty territory as the Crown could pay without incurring loss;

- d) By failing to fulfill the purpose of the Treaty augmentation clause, which was to allow the Robinson Huron Treaty Anishinabek to share in resource revenues from the Treaty territory;
- e) By failing to meet the Anishinabek perspective regarding the annuity augmentation promise under Anishinabe law, which is that the Crown would exercise its discretion to increase the annuity beyond one pound per individual, in a manner respectful and considerate of its Anishinabek Treaty partner; and
- f) By failing to provide an accounting or to undertake any meaningful consultation with the Plaintiffs on implementing an increase to Treaty annuities as per the terms of the Treaty.

Honour of the Crown

- 131. The Defendants have a duty to act in a manner that is consistent with the Honour of the Crown in the interpretation, implementation and performance of its Treaty promises and obligations, including the written, oral and implied terms of the Treaty and the expectations of its Anishinabek Treaty partners. The duty also extends to the Defendants in resolving issues and claims related to implementing the terms of the Treaty.
- 132. The Honour of the Crown holds the Crown to a high standard of honourable dealing. It requires the Defendants to act honourably in a way that allows the parties to accomplish the original intentions of the Treaty and expectations of the Anishinabek Treaty partners, as understood by both the Crown and First Nations according to their respective customs and laws.
- 133. The Honour of the Crown is always at stake in its dealings with Indian people. As a principle, the Crown's honour cannot be interpreted narrowly or technically. The Honour of the Crown is a core precept, which arises out of the Crown's assertion of de facto sovereignty over territory to which First Nations exercised

prior rights of occupancy, according to their own systems of laws and governance. The Honour of the Crown must be given full effect in order to promote reconciliation between the Crown and First Nations.

134. The nature of the Treaty and the words in the annuity augmentation clause that state that the Crown desires to deal liberally and justly with the Robinson Huron Treaty Anishinabek, expressly engage the Honour of the Crown. The discretion to increase the perpetual annuity to "such further sum as Her Majesty may be graciously pleased to order," must be interpreted and applied in a manner consistent with the expectations of the Robinson Huron Treaty Anishinabek, in accordance with the Honour of the Crown.
135. When considering the implementation of the Treaty promise to augment the perpetual annuity made to the Robinson Huron Treaty Anishinabek, the Honour of the Crown requires the Defendants to:
- a) take a broad purposive approach to the interpretation of the promise; and
 - b) act diligently to fulfil it.
136. The purpose of the annuity augmentation clause was to enable the Robinson Huron Treaty Anishinabek to share in resource revenues from the Treaty territory. According to Robinson, he inserted the "clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity". Robinson also noted that this promise was relied upon by the Anishinabek to induce them into "surrendering their extensive territory".
137. The purpose of the Treaty augmentation clause has not been fulfilled: that is, the Robinson Huron Treaty Anishinabek have not benefited from a share of resource revenues from the Treaty territory, despite the fact that territory has been sufficiently productive to enable the Crown to increase the annuity without incurring a loss.

138. The Defendants are in breach of the Honour of the Crown because they have failed to act diligently to fulfill the purpose of the Treaty augmentation clause.
139. The Defendants have also breached the Honour of the Crown by failing to meet the Anishinabek understanding and expectations of the Treaty annuity augmentation promise. Honour of the Crown obligates the Crown to interpret and implement this Treaty promise according to the understanding and expectations of its Treaty partner under Anishinabek law, which is that the Crown would exercise its discretion to increase the annuity beyond one pound per individual, in a manner respectful and considerate of its Anishinabek Treaty partner.

The Crown's Fiduciary Obligations

140. There is a fiduciary relationship between the Crown and the Robinson Huron Treaty Anishinabek. The Crown also owes the Anishinabek a fiduciary duty to properly implement the written, oral and implied terms of the Treaty, including the annuity augmentation clause, for the benefit of the Anishinabek according to their expectations and purpose of the promise.
141. This fiduciary obligation finds its source in the pre-existing rights and interests of the Anishinabek in the Treaty territory, as recognized in the *Royal Proclamation of 1763* and the findings and recommendations of the Anderson Commission of 1848 and the Vidal Anderson Commission of 1849, combined with the principle in the *Royal Proclamation* that Anishinabek lands were inalienable except upon surrender to the Crown. The Anishinabek interest in the land gave rise, upon surrender to a distinctive fiduciary obligation on the part of the Crown to fulfill the written, oral and implied terms of the surrender document, the Robinson Huron Treaty.

142. The Honour of the Crown gives rise to a fiduciary duty when the Crown assumes discretionary control over a specific or cognizable Aboriginal interest. The pre-existing rights and interests of the Robinson Huron Treaty Anishinabek in the Treaty lands constitute a cognizable Aboriginal interest sufficient to ground a fiduciary duty. Further, the Anishinabek reserved and maintained ongoing rights in the Treaty territory, including a contingent interest, which entitles them to share in resource revenues from the territory, through the Treaty augmentation clause. As well, the Treaty annuity augmentation clause itself is a right reserved by the Anishinabek to annuities from production in the Treaty territory, and as such, represents a specific Aboriginal Interest sufficient to ground a fiduciary obligation.
143. The Crown has undertaken discretionary control over the Treaty territory and the amount of to be paid to the Robinson Huron Treaty Anishinabek pursuant to the annuity provisions of the Treaty.
144. Furthermore, the Treaty represents a solemn undertaking by the Crown to act in the best interests of the Robinson Huron Treaty Anishinabek.
145. Crown conduct in carrying out the terms of the Treaty, including control and management of the resources developed within the Treaty territory, has had and continues to have a direct impact on the Robinson Huron Treaty Anishinabek and their ability to sustain themselves from the Treaty territory and exercise their Treaty rights.
146. The Plaintiffs are a defined class of persons particularly vulnerable to the Crown's control over the land and resources in the Treaty territory and the amount and timing of the payment of any increased annuity payable under the Treaty. The Plaintiffs are and have always been completely at the mercy of the Crown as to whether they are to receive an increase in their annuity, which has not occurred since 1875.
147. The Defendants are in a dominant position because of their de facto sovereignty over the Treaty territory. The information required for the appropriation and

allocation of revenues are outside the control of the Plaintiffs and are entirely within the control of the Defendants. Likewise the Defendants specifically regulate and collect the resource revenues outlined within the Treaty. The Plaintiffs are placed in a correspondingly vulnerable position and obtaining the benefits of the increased treaty annuity is wholly dependent on the exercise of the Defendants' discretion.

148. The failure of the Crown to exercise its discretion to properly increase the annuity has adversely affected the Plaintiffs' legal entitlement to the same and has substantial practical consequences in that the ongoing rights and benefits promised in the Treaty are critical for the Plaintiffs in order to meet their needs, individually and collectively, and achieve their broad economic, social and cultural objectives.
149. By failing to fulfil the terms of the Robinson Huron Treaty, the Defendants are ignoring the Crown's obligation to achieve the just settlement of Aboriginal claims through the treaty process and are not promoting reconciliation with the Robinson Huron Treaty Anishinabek.
150. The Defendants' relationship with the Plaintiffs includes a fiduciary obligation to provide oversight and accountability in carrying out the terms of the Treaty. Specifically, the Defendants have the following obligations:
 - a) In implementing the Treaty the Defendants must not erode, delay or minimize the scope and substance of the benefits promised to the Plaintiffs in the Treaty;
 - b) The Crown must implement those procedures that will oversee the terms of the Treaty in a manner that is reasonably capable of achieving the benefits as set out in the Treaty; and
 - c) The Crown is obliged to communicate to the Plaintiffs those procedures and initiatives it intends to rely on in order to provide for those benefits set out in the Treaty.

151. In failing to carry out its duties under the terms of the Treaty, the Defendants have breached their fiduciary obligations under the Treaty by, inter alia:

- a) Failing to augment the collective amount of the perpetual annuity to one pound per individual or more prior to 1875;
- b) Failing to augment the collective amount of the perpetual annuity beyond one pound per individual or to in any way formally address the Treaty annuity augmentation clause since 1875;
- c) Failing to fulfill the purpose of the Treaty augmentation clause, which was to allow the Robinson Huron Treaty Anishinabek to share in resource revenues from the Treaty territory;
- d) Failing to meet the Anishinabek perspective, and their expectations regarding the annuity augmentation promise under Anishinabek law, which is that the Crown would exercise its discretion to increase the annuity beyond one pound per individual, in a manner respectful and considerate of its Anishinabek Treaty partner;
- e) Neglecting to appoint a representative with the authority to meaningfully implement and oversee the terms of the Treaty;
- f) Failing to disclose relevant information to the Plaintiffs, including an accounting of revenues and expenses in the Treaty territory, since the Treaty was signed in 1850;
- g) Failing to provide the Plaintiffs any relevant studies, reports or evaluations on the status of the Treaty augmentation clause since the Treaty was signed in 1850;
- h) Failing to instruct its own departments, agencies and officials to deal with the specific issue of interpreting and implementing the terms of the Treaty, particularly the Treaty augmentation clause;

- i) Failing to consult and accommodate the Plaintiffs and their interests regarding how to address and resolve infringements related to the Treaty augmentation annuity clause or to acknowledge that such a duty exists; and
- j) Putting their own interests ahead of the interests of the Treaty beneficiaries.

The UN Declaration on the Rights of Indigenous Peoples

- 152. The Plaintiffs plead the application of the *UN Declaration on the Rights of Indigenous Peoples* ("Declaration") with respect to the interpretation and implementation of their right to augmented annuities under the Robinson Huron Treaty.
- 153. The Declaration was adopted by the UN General Assembly on September 13, 2007. It was endorsed by Canada on November 12, 2010.
- 154. A number of the provisions in the Declaration apply, particularly paragraph 1 of Article 37, which provides as follows:

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
- 155. Defendants, as successors to the British Crown, ought to be held to their treaty promises, including the Treaty promise made to the Robinson Huron Treaty Anishinabek to augment the perpetual annuity, in accordance with their international obligations. Plaintiffs are entitled to relief against Defendants to enforce said Treaty promise and to compensation for past breaches, in accordance with the Defendants' international obligations, including the Declaration.

156. The Plaintiffs propose that this action be tried in the City of Sudbury, in the Province of Ontario.

Date: September 9, 2014

NAHWEGAHBOW, CORBIERE
David C. Nahwegahbow, IPC, LSM #22473L)
Dianne G. Corbiere, IPC (#401720)
5884 Rama Road, Suite 109
Rama, Ontario L3V 6H6
T: (705) 325-0520
F: (705) 325-7204
E: dndaystar@nncfirm.ca
dgcorbiere@nncfirm.ca

FARRIS VAUGHAN WILLS & MURPHY LLP
Joseph J. Arvay, QC (LSBC#6441)
P.O. Box 10026 Pacific Centre
25th Floor - 700 West Georgia Street
Vancouver, BC V7Y 1B3
T: (604) 684-9151
F: (604) 661-9349
E: jarvay@farris.com

SEMAGANIS WORME
Donald E. Worme, QC, IPC (LSS #3138)
300-203 Packham Ave.
Saskatoon, Saskatchewan S7N 4K5
T: (306) 664-7175
F: (306) 664-7176
E: legalwarrior@sasktel.net

SOLICITORS FOR THE PLAINTIFFS

SCHEDULE "A"

COPY

OF THE

ROBINSON TREATY

Made in the Year 1850

WITH THE

OJIBEWA INDIANS

OF LAKE HURON

CONVEYING CERTAIN LANDS TO THE CROWN

Reprinted from the edition of 1939 by

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

Cat. No. CI 72-1264

THIS AGREEMENT, made and entered into this ninth day of September, in the year of our Lord one thousand eight hundred and fifty, at Sault Ste. Marie, in the Province of Canada, between the Honorable WILLIAM BENJAMIN ROBINSON, of the one part, on behalf of HER MAJESTY THE QUEEN, and SHINGUACOUSE NEBENAIGOCHING, KEOKOUSE, MISHEQUONGA, TAGAWININI, SHABOKISHICK, DOKIS, PONEKEOSH, WINDAWTEGOWININI, SHAWENAKESHICK, NAMASSIN, NAOQUAGABO, WABAKEKIK, KITCHEPOSSIGUN by PAPASAINSE, WAGEMAKI, PAMEQUONASHEUNG, Chiefs; and JOHN BELL, PAQWATCHININI, MASHEKYASH, IDOWEKESIS, WAQUACOMICK, OCHEEK, METIGOMIN, WATACHEWANA, MINWAWAPENASSE, SHENAOQUOM, ONINGEGUN, PANAISSY, PAPASAINSE, ASHEWASEGA, KAGESHEWAWETUNG, SHAWONEBIN; and also Chief MAISQUASO (also Chiefs MUCKATA, MISHOQUET, and MEKIS), and MISHOQUETTO and ASA WASWANAY and PAWISS, principal men of the OJIBEWA INDIANS, inhabiting and claiming the Eastern and Northern Shores of Lake Huron, from Penetanguishine to Sault Ste. Marie, and thence to Balchewanaung Bay, on the Northern Shore of Lake Superior; together with the Islands in the said Lakes, opposite to the Shores thereof, and inland to the Height of land which separates the Territory covered by the charter of the Honorable Hudson Bay Company from Canada; as well as all unconceded lands within the limits of Canada West to which they have any just claim, of the other part, witnesseth:

THAT for, and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each year, of which due notice will be given, at such places as may be appointed for that purpose, they the said Chiefs and Principal men, on behalf of their respective Tribes or Bands, do hereby fully, freely, and voluntarily surrender, cede, grant, and convey unto Her Majesty, her heirs and successors for ever, all their right, title, and interest to, and in the whole of, the territory above described, save and except the reservations set forth in the schedule hereunto annexed; which reservations shall be held and occupied by the said Chiefs and their Tribes in common, for their own use and benefit.

And should the said Chiefs and their respective Tribes at any time desire to dispose of any part of such reservations, or of any mineral or other valuable productions thereon, the same will be sold or leased at their request by the Superintendent-General of Indian Affairs for the time being, or other officer having authority so to do, for their sole benefit, and to the best advantage.

And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make, or cause to be made, the payments as before mentioned; and further to allow the said Chiefs and their Tribes the full and free privilege to hunt over the Territory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing; saving and excepting such portions of the said Territory as may from time to time be sold or leased to individuals or companies of individuals, and occupied by them with the consent of the Provincial Government.

The parties of the second part further promise and agree that they will not sell, lease, or otherwise dispose of any portion of their Reservations without the consent of the Superintendent-General of Indian Affairs, or other officer of like authority, being first had and obtained. Nor will they at any time hinder or prevent persons from exploring or searching for minerals, or other valuable productions, in any part of the Territory hereby ceded to Her Majesty, as before mentioned. The parties of the second part also agree, that in case the Government of this Province should before the date of this agreement have sold, or bargained to sell, any mining locations, or other property, on the portions of the Territory hereby reserved for their use; then and in that case such sale, or promise of sale, shall be perfected by the Government, if the parties claiming it shall have fulfilled all the conditions upon which such locations were made, and the amount accruing therefrom shall be paid to the Tribe to whom the Reservation belongs.

The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees, that should the Territory hereby ceded by the parties of the second part at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial Currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided further that the number of Indians entitled to the benefit of this treaty shall amount to two-thirds of their present number, which is fourteen hundred and twenty-two, to entitle them to claim the full benefit thereof. And should they not at any future period amount to two-thirds of fourteen hundred and twenty-two, then the said annuity shall be diminished in proportion to their actual numbers.

The said William Benjamin Robinson of the first part further agrees, on the part of Her Majesty and the Government of this Province, that in consequence of the Indians inhabiting French River and Lake Nipissing having become parties to this treaty, the further sum of one hundred and sixty pounds Provincial Currency shall be paid in addition to the two thousand pounds above mentioned.

*Schedule of Reservations made by the above-named subscribing Chiefs
and Principal Men.*

FIRST—Pamequonaishcung and his Band, a tract of land to commence seven miles, from the mouth of the River Maganetawang, and extending six miles east and west by three miles north.

SECOND—Wagemake and his Band, a tract of land to commence at a place called Nekickshegeshing, six miles from east to west, by three miles in depth.

THIRD—Kitcheposkissegan (by Papasainse), from Point Grondine westward, six miles inland, by two miles in front, so as to include the small Lake Nessin-assung—a tract for themselves and their Bands.

FOURTH—Wabakekik, three miles front, near Shebawenaning, by five miles inland, for himself and Band.

FIFTH—Namassin and Naoquagabo and their Bands, a tract of land commencing near Qacloche, at the Hudson Bay Company's boundary; thence westerly to the mouth of Spanish River; then four miles up the south bank of said river, and across to the place of beginning.

SIXTH—Shawenakishick and his Band, a tract of land now occupied by them, and contained between two rivers, called Whitefish River, and Wanabitaseke, seven miles inland.

SEVENTH—Windawtegawinini and his Band, the Peninsula east of Serpent River, and formed by it, now occupied by them.

EIGHTH—Ponekeosh and his Band, the land contained between the River Mississaga and the River Penebewabecong, up to the first rapids.

NINTH—Dokis and his Band, three miles square at Wanabeyakokaun, near Lake Nipissing and the island near the Fall of Okickandawt.

TENTH—Shabokishick and his Band, from their present planting grounds on Lake Nipissing to the Hudson Bay Company's post, six miles in depth.

ELEVENTH—Tagawinini and his Band, two miles square at Wanabitibing, a place about forty miles inland, near Lake Nipissing.

TWELFTH—Keokouse and his Band, four miles front from Thessalon River eastward, by four miles inland.

THIRTEENTH—Mishequanga and his Band, two miles on the lake shore east and west of Ogawaminang, by one mile inland.

FOURTEENTH—For Sbinguacouse and his Band, a tract of land extending from Maskinongé Bay, inclusive, to Partridge Point, above Garden River on the front, and inland ten miles, throughout the whole distance; and also Squirrel Island.

FIFTEENTH—For Nebenaigoching and his Band, a tract of land extending from Wanabekineyunung west of Gros Cap to the boundary of the lands ceded by the Chiefs of Lake Superior, and inland ten miles throughout the whole distance, including Batchewanaung Bay; and also the small island at Sault Ste. Marie used by them as a fishing station.

SIXTEENTH—For Chief Mekis and his Band, residing at Wasaquesing (Sandy Island), a tract of land at a place on the main shore opposite the Island; being the place now occupied by them for residence and cultivation, four miles square.

SEVENTEENTH—For Chief Muckatamishaquet and his Band, a tract of land on the east side of the River Naishconteong, near Pointe aux Barils, three miles square; and also a small tract in Washauwenega Bay—now occupied by a part of the Band—three miles square.

Signed, sealed, and delivered at Sault
Ste. Marie, the day and year first
above written, in presence of—

(Signed)

ASTLEY P. COOPER,
Capt. Rifle Brig.

GEORGE IRONSIDE,
S. I. Affairs.

F. W. BALFOUR,
Lieut. Rifle Brig.

ALLAN MACDONELL.

GEO. JOHNSTON,
Interpreter.

Louis CADOTT.

J. B. ASSIKINACK.

T. W. KEATING.

JOS. WILSON.

(Signed)

W. B. ROBINSON.

SHINGUACOUSE,	his + mark.	[L. S.]
NEBENAIGOCHING,	his + mark.	[L. S.]
KEOKOUSE,	his + mark.	[L. S.]
MISHEQUONGA,	his + mark.	[L. S.]
TAGAWININI,	his + mark.	[L. S.]
SHABOKESHICK,	his + mark.	[L. S.]
DOKIS,	his + mark.	[L. S.]
PONEKEOSH,	his + mark.	[L. S.]
WINDAWEGOWININI,	his + mark.	[L. S.]
SHAWENAKESHICK,	his + mark.	[L.S.]
NAMASSIN,	his + mark.	[L. S.]
MUCKATA MISHAQUET,	his + mark.	[L.S.]
MEKIS,	his + mark.	[L.S.]
MAISQUASO,	his + mark.	[L. S.]
NAOQUAGABO,	his + mark.	[L.S.]
WABOKEKICK,	his + mark.	[L.S.]
KITCHEPOSSEGUN, (by Papasainse)	his + mark.	[L.S.]
WAGEMAKE,	his mark.	[L.S.]

PAMEQUONAISHCUNG,	his + mark.	[L.S.]
JOHN BELL,	his + mark.	[L.S.]
PAQWATCHININI,	his + mark.	[L.S.]
MASHEKYASH,	his + mark.	[L.S.]
IDOWEKESIS,	his + mark.	[L.S.]
WAQUACOMICK,	his + mark.	[L.S.]
MISHOQUETTO,	his + mark.	[L.S.]
ASA WASWANAY,	his + mark.	[L.S.]
PAWISS,	his + mark.	[L.S.]
OCHEEK,	his + mark.	[L.S.]
METIGOMIN,	his + mark.	[L.S.]
WATACHEWANA,	his + mark.	[L.S.]
MIMEWAWAPENASSE,	his + mark.	[L.S.]
SHENAOQUM,	his + mark.	[L.S.]
ONINGEGUN,	his + mark.	[L.S.]
PANAISY,	his + mark.	[L.S.]
PAPASAINSE,	his + mark.	[L.S.]
ASHEWASEGA,	his + mark.	[L.S.]
KAGISHEWAWETUNG, (by Baboncung)	his + mark.	[L.S.]

} SHAWONEBIN, his
+ [L. S.]
mark.

Witness to signatures of Muckata Mishaquet, Mekis, Mishoquetto,
Asa Waswanay, and Pawiss—

T. G. ANDERSON, S. I. A.

W. B. HAMILTON,

W. SIMPSON,

ALFRED A. THOMPSON.

Court File No. _____

RESTOULE, et al
Plaintiffs

-v-

ATTORNEY GENERAL OF CANADA, et al
Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Sudbury

STATEMENT OF CLAIM

NAHWEGAHBOW, CORBIERE
David C. Nahwegahbow, IPC, LSM (#22473L)
Dianne G. Corbiere, IPC (#401720)
Genoodmagejig/Barristers & Solicitors
5884 Rama Road, Suite 109
Rama, Ontario L3V 6H6
T: (705) 325-0520
F: (705) 325-7204
E: dndaystar@nncfirm.ca
dgcorbriere@nncfirm.ca

Solicitor for the Plaintiffs,
RESTOULE, et al