Court File No: C-3512-14 & C-3512-14A

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

AND:

THE RED ROCK FIRST NATION and THE WHITESAND FIRST NATION

Third Parties

OPENING OF THE PLAINTIFFS

INTRODUCTION

1. This case involves the interpretation of the augmentation of annuities clause in the Robinson Huron Treaty of 1850. The treaty relationship between the Anishinaabe and the Crown is a fundamental, sacred and ongoing one. Like all long-term relationships, to be functional, it requires respectful attention, mutual understanding and renewal.

2. The clause at issue is worded as a promise from Her Majesty to the Anishinabek signatories. To quote directly from the Treaty:

> 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 [emphasis added].

TREATY INTERPRETATION PRINCIPLES

3. The task before the Court on this hearing is to give meaning to this provision, based on the common intention of the parties at the time the treaty was made. In doing so, it is important to keep in mind what the Supreme Court of Canada has said is the "bottom line" in treaty interpretation – there may be many possible interpretations of the common intention at the time the treaty was made, but the Court's obligation is to choose the interpretation of the common intention which best reconciles the First Nation interests and those of the Crown.

4. Treaties are unique legal arrangements, being as they are a product of two separate legal orders and two very different cultures. The Supreme Court of Canada has instructed courts on the special rules of interpretation that apply. The Court must have regard to the profound cultural and linguistic differences between the parties and give the words used in the treaty the meaning that

they would have held for the parties at the time. Beyond considering how the words in the treaty would have been translated, the Court must also consider how the nature of the promises would have been understood. As the Supreme Court of Canada has said, "the promises in the treaty must be placed in their historical, political, and cultural contexts to clarify the common intentions of the parties and the interests they intended to reconcile at the time."

5. Determining what was intended almost two centuries ago is a daunting task, which is further complicated by the fact that the two parties approached the treaty from fundamentally different worldviews and perspectives. As you will hear, very few people in attendance at the Treaty negotiations could read, write or even speak English fluently. Significantly, this includes the Anishinabek signatories who, being unable to read, write or speak English, had to rely completely on the translation and explanation of the written text, and on oral promises made by William B. Robinson on behalf of Her Majesty, which were then interpreted.

6. This fact grounds two additional treaty interpretation principles: First, in searching for the common intention of the parties, the integrity and honour of the Crown is presumed. The Crown must not have engaged in any sharp dealings. Second, the text of the treaty must not be interpreted narrowly, literally, technically, but must be given the meaning it would naturally have held for the Anishinabek signatories and Robinson at the time.

7. Because this is the task before the court, a critical aspect of the evidence you will hear will be that of the Anishinaabe perspective that informs the understanding of the treaty. This court will need to learn about Anishinaabe law, language, diplomacy and metaphor, in order to fulfill the obligation to give real meaning and weight to the Anishinaabe perspective in the interpretive exercise. The court will need to recognize that the Anishinaabe way of understanding and living in the world was, and still is, fundamentally different and distinct from that of the broader settler

society. Recognizing this is not inconsistent with a search for the common intention of the parties. Rather respecting the Anishinabek as equal partners in the treaty relationship, requires the nature and scope of the treaty obligations to be defined in a manner that respects the Anishinaabe understanding of who they are and what is the right way to live with others in the world.

WHERE THE PARTIES ALIGN AND THE ONLY QUESTION BEFORE THIS COURT

8. Ultimately this Court's task to determine the common intention of the parties that best fulfills the purpose of the treaty promise. As a result, it is important at the outset to identify how the parties' interests and viewpoints align. Hence, even as it is important to not minimize the distinctiveness of the Anishinaabe perspective, it is also critical not to overlook the ways in which the parties to the Treaty agree. In fact, we say there is much that does not appear to be in dispute between the parties.

9. In its recently issued *Principles to Guide the Relationship between Canada and Indigenous Nations (which we attach as an appendices to this opening)*, Canada has set out its position regarding the nature of treaties generally. Much of this is in accord with what you will hear from us about the Anishinaabe view. Canada states that "treaties have been and are intended to be acts of reconciliation." We agree. Canada says that "In accordance with the Royal Proclamation of 1763, many Indigenous Nations and the Crown historically relied on treaties for mutual recognition and respect to frame their relationship." We agree. Canada says that historic treaties, like the Robinson Huron Treaty are "frameworks for living together, including the modern expression of these relationships." We agree. To the extent that the evidence of the government's experts is inconsistent with Canada's stated position, they can be of little assistance to the Court.

10. Thus the parties agree on a fundamental point - while the treaty of 1850 is an agreement, it is not a mere transaction. Rather, it is as Canada's Principles recognize, a framework for living together, a framework for a treaty relationship.

11. Another fundamental point to take note of is that the treaty relationship between the Crown and the Anishinabek did not start in 1850, but almost a century before, when the Crown and the Anishinabek became bound together with the Covenant Chain, which symbolized their "nation-to-nation relationship". Our experts, Alan Corbiere and Heidi Bohaker explained the significance of this metaphor, regionally and internationally. Let me quote Dr. Bohaker briefly from one of her reports. She said the Covenant Chain was ""used initially to describe an agreement negotiated between the Mohawk of the Haudenosaunee Confederacy and the Dutch, which began in the early seventeenth century. It was a trading relationship, and the initial metaphor was a rope, signifying that the two peoples were still distinct, and yet bound together. When the British captured Albany from the Dutch and took over the relationship in 1664, the metaphor of a rope was replaced with an iron chain, intended to indicate the strength of the relationship. But iron rusts, and so by the late seventeenth century a new metaphor, "silver," was used to define the covenant that was both a trading relationship and military alliance between the British and the Haudenosaunee Confederacy. Silver proved a highly suitable metaphor, as it tarnishes and turns black (the colour associated with war in Great Lakes colour symbolism) unless it is polished regularly (i.e., unless regular meetings are held to address grievances). Silver was used in the metaphor because the British and Haudenosaunee wanted to emphasize that regular work was needed by both sides to maintain the relationship represented by the image of a covenant chain. It was this nation-to-nation relationship that was extended in 1761 to the Western Anishinaabek, who had been French allies during the Seven Years War, and was reconfirmed at the Treaty of Niagara in 1764 as defining the

relationship between the British Crown, the Haudenosaunee Confederacy and what was called the Western Confederacy, which included the Anishinaabek."

12. In saying this, we want to make it clear that the force of the promises in the 1850 treaty are not dependent on the Niagara Treaty or any other earlier treaty, and that we are not asking the Court to make any ruling on the earlier treaty terms.

13. However, the Anishinabek perspective on the 1850 agreement, and the Crown's as well, must be understood as being informed by the earlier and ongoing relationship between the Anishinaabek and Crown.

14. The Robinson Huron Treaty that is before this Court constituted a renewal and deepening of the treaty relationship, by providing the framework under which the Treaty territory would be shared. As a result of the terms of the 1850 agreements, settlers were able to move onto this land and to utilize its resources. While the treaty welcomed the British onto Anishinaabe lands, it did not terminate the relationship the Anishinaabek had with the land.

15. From the Anishinaabe perspective, that relationship is a sacred one which was established by the Creator with the intention that the land would sustain the people and the people would care for the land. The treaty documents before the Court today set out some of the terms by which the Anishinaabek agreed in 1850 that the settlers too could make their homes in this territory, alongside those who were already here.

16. As the framework for a long-term relationship between allies, the 1850 Treaty must be interpreted in manner that allows the rights and obligations it provides for to remain meaningful. The treaty relationship must grow and evolve, in a manner that respects and gives effect to the core function of the Treaty's solemn promises. This is another principle of treaty interpretation from

the Supreme Court of Canada, that the "Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core treaty right in its modern context."

17. The augmentation clause which is at issue in this case is the one that provides for the Anishinaabek to receive ongoing economic benefits in the form of annuities. Again, there is significant agreement on what this provision does. The parties all agree that the treaty provided that the Anishinabek were entitled to ongoing annuities, and that the amount of those annuities was tied to the productivity of the land that was the subject of the treaty.

18. There is no dispute between the parties that the treaty and in particular the augmentation clause was meant to be mutually beneficial in this regard - that the Anishinaabek agreed that the Crown and the settlers could utilize the lands, and that the Crown agreed to provide economic benefits to the Anishinaabek that would increase based on the economic benefits obtained from that land.

19. The only question before this court is whether the parties intended the Crown's promise to be strictly limited, frozen in time, rigid and parsimonious.

THE DEFENDANTS' POSITION

20. The Defendants who today represent the Crowns say that once the annuities reached $4 per person around 1875 , the ability of the 1850 Treaty to ensure that the Anishinaabek received a fair and equitable share of the proceeds of the land was wholly exhausted. They say that the reference to "such further sum as Her Majesty may be graciously be pleased to order" is entirely unnecessary and redundant.

21. This assertion is based on the position that this part of the augmentation clause only refers to the Crown's unbridled discretion to raise treaty benefits ex gratia. - a discretion that could clearly be exercised even if the treaty was silent on the issue.

22. Make no mistake: this is the interpretation of the common intention that the Defendants, the governments of Canada and Ontario today, would have you give to this treaty. These Defendants would have you find that this clause in the 1850 Treaty is meaningless; that the treaty can be interpreted as if these words did not exist. Words that are simply trivial, surplusage, puffery. Words in a treaty but not treaty words.

23. According to these Defendants, once the Crown paid $4 per person in annuities, it could simply refuse to further increase the annuities to reflect the value of the land, or even to consider doing so, irrespective of the amount of wealth forthcoming to the Crown from the use of the land.

24. If the Defendants' theory is accepted, it would render the treaty wholly incapable of ensuring that the Anishinaabek would be dealt with in a just and liberal manner, as the treaty promised that they would be, and as the honour of the Crown requires.

25. The Defendants' interpretation would nullify what the Plaintiffs say is the core of annuities promise – that it will provide the Anishinaabek with the ability to continue to be sustained by the land through sharing, in a meaningful way, the economic benefits obtained from the bounty of the land.

THE PLAINTIFFS' POSITION

26. The plaintiffs, on the other hand, say that even under the most basic principles of legal interpretation, even before you get to the principles applicable to treaty making, and even before

you consider the Anishinaabek's own perspective on treaty making; that it would be absurd to adopt an approach that renders the reference to "such further sum" entirely superfluous.

27. More importantly, however, we say that the Crown's promise and the Anishinaabek reliance on it cannot be understood as limited in the manner suggested by the Defendants in this litigation today. When William Benjamin Robinson, on behalf of Her Majesty, promised that the annuity would increase if the land turned out to be more productive than expected, to $4 per person or such further sum; neither party thought that by leaving the further increases to the gracious goodness of the Queen that the Treaty gave the Crown the right to simply refuse to provide the Anishinaabek with a fair share of the revenues associated with the land.

28. Robinson himself must have believed that the augmentation clause was capable of providing the Anishinaabe received a fair share of the proceeds of the land. After the treaty was concluded, Robinson pointed to the augmentation clause as the means by which he obtained agreement, and as means by which the Crown would assure that the Anishnaabe were dealt with fairly and to their satisfaction. This would not have been the case if it provides for a limited annuity of $4, less than half of what some Anishinaabe leader sought, and the going rate for annuities in the Province of Canada at the time.

29. The Anishinaabek would have understood that the Queen's discretion to provide benefits to her Treaty partner would be exercised honorably and generously and consistent with the promise to treat them in a just and liberal manner.

30. There are only two possible interpretations of the Treaty: Either the 1850 Treaty was a just and liberal arrangement that would provide for an honorable and generous exercise of discretion by the Crown; Or the Crown deceived the Anishinaabek by leading them to believe that it was -- a position that neither Canada nor Ontario would dare to advance.

31. By the time the treaty was signed, the British Crown had been assuring the Anishinaabek for over a century that they were in a mutually beneficial and respectful alliance governed by the mutually understood and adopted expectations and obligations of their nation-to-nation relationship. The Crown knew and acted upon the fact that the Anishinaabek viewed treaty making as a means of establishing obligations grounded in the respect, responsibility and generosity associated with kinship. The Crown repeatedly told the Anishinaabek, using the diplomatic metaphorical language of that time, that their alliance with the British would bring them happiness and prosperity; that they should never be in want; that the Great Father or Mother, as the King and Queen were referred to, would treat them with fairness and generosity, and that the Crown would fulfill its obligations to the Anishinaabek.

32. The Crown also understood the need for renewal of the nation-to-nation relationship -- brightening of the Covenant Chain relationship. The idea of a treaty obligation that would evolve as circumstances changed would have been consistent with this understanding of treaties as long term alliances that required adjustment and renewal over time.

33. Finally, the Crown was well aware that in 1850 the Anishinaabek knew that their way of life was under threat, and that they wanted a treaty arrangement that would enable them to continue to benefit from the wealth of the land in the face of rapidly changing circumstances.

34. A treaty promise to share that wealth would be one that the Anishinaabek expected to be implemented faithfully and generously by treaty partners whom they had welcomed into their relationship with the Creator and the lands the Creator provided to them. The Crown would have likewise understood this.

35. For the Anishinabek, treaty-making was a way to build alliances that would provide them with stability and security in an ever changing and often precarious world.

36. This requires treaty obligations to be meaningful. A treaty that says, "we promise to treat you fairly" has meaning to the Anishinaabek, just as it ought to for the Crown acting honourably in all of its dealings. A treaty that says, "we promise to treat you in accordance with the Queen's disposition", or as expressed in the Treaty, "as Her Majesty may be graciously pleased to order" also has meaning if there is a common understanding that the disposition of the Queen is to be kind and generous and caring. And indeed, that is what the Crown had been saying about the Monarch's disposition since at least the Treaty of Niagara in 1764.

37. Only the plaintiffs' interpretation is consistent with both the words in the treaty and a treaty relationship based on mutual recognition and respect. Only the plaintiff's interpretation allows the court to find a common intention. Such an interpretation allows the treaty promise to fulfill its purpose to enable the Anishinaabek to continue to sustain themselves from the lands and to flourish in the new arrangement, which they had been promised would be the case. But importantly, such an interpretation also fulfills the Crown's goal of permitting exploration and development of the treaty territory, while ensuring that there was no "overpayment" for land to which the Crown needed access, but thought would likely ultimately be of little greater value.

In the period leading up to the 1850 Treaty, the Anishinabek repeatedly demanded a share of the wealth being "discovered" and removed from their lands. In response, the Crown repeatedly emphasized the low value of the land compared to tracts that had been the subject of treaties in Southern Ontario.

38. At the time of the 1850 Treaty, the Province of Canada was basically broke, and could not meet the Anishinaabek's demands for treaty annuities. The $4 set out in the Treaty is 60% less than the $10.00 per person others received in Ontario, and much less than what had been provided

in treaties entered into south of the border, and which informed the Anishinaabek's expectations of what kind of benefit was appropriate for a mutually beneficial arrangement.

39. As a result, the Crown proposed the annuity arrangement with the "escalator" clause – as a "resource revenue sharing arrangement" or kind of "pay as you go" arrangement that required increases to annuities to be paid only when the Crown was in a position to profit from the lands. Such an arrangement made sense to the Crown when it could not afford to pay more at the outset. But, it is only just, liberal, honourable and mutually beneficial, if this arrangement permits the Anishinaabek to realize a fair share of the value which is ultimately being realized and removed from their lands.

SUMMARY OF THE PROPOSED EVIDENCE

40. The evidence that has been filed by affidavit in this hearing, and that you will hear in the coming weeks will provide you with the historical, political and cultural context to do what the Supreme Court of Canada has directed: Choose, from among the various possible interpretations of the common intention at the time the treaty was made, the one which best reconciles the First Nation interests and those of the Crown and that best fulfills the purpose for which the treaty was entered into. This is the bottom line of treaty interpretation.

41. While the specific question before you is a narrow one, involving the interpretation of a single clause in a single treaty, it can only be answered by taking into account the broader context. As a result, you will first hear from experts on the historical record relating to the circumstances leading up the 1850 Treaty. You will then hear from Elders, community members and experts on Anishinaabe laws and understandings that inform the Anishinaabe participation in the treaty relationship with the Crown.

42. I will be introducing you to the evidence of ethnohistorian James Morrison and historical economist Carl Beal. Mr. Nahwegahbow will then follow me with regard to the evidence of expert and lay witnesses, as well as Elders, who will provide the Anishinaabe perspective. You will also hear evidence from Gwyneth Jones, but as she is a common expert for the Huron and Superior Plaintiffs, we will leave it to Mr. Schachter to outline her evidence.

JAMES MORISON II: THE ETHNOHISTORY OF THE ROBINSON TREATIES 1846-1850

43. Both parties accept that James Morrison is an ethnohistorian and a well-known expert on the Robinson Treaties of 1850, and the ethnohistory of the Anishinabek. Mr. Morrison produced a report for The Royal Commission on Aboriginal Peoples (RCAP) on the Treaties in 1996, and since that time, has continued his studies of the Treaty and their historical context. Mr. Morrison will explain that in 1845, for the first time in the history of what is now Ontario, the Governor of the Province of Canada declared a region of the province to constitute public lands, without first making a treaty with the Nation of Indians then in possession of the land.

44. You will hear how this was done largely to facilitate the exploration and development associated with mining, an industry whose participants included many prominent and less prominent government officials. You will hear how this unauthorized development put the government and those running the mines into conflict with the Anishinaabe, who asserted their right to control and obtain wealth from the use of resources on their lands, and who repeatedly argued for the need for a fair treaty arrangement which would provide them with new sources of wealth, in the face of development that was driving away the animals on which the Anishinaabe had traditionally depended.

45. Mr. Morrison has explained in his affidavit, and you will hear from him about Chief Shinguaconse and Chief Nebenaigoching, two Anishinaabe chiefs who were instrumental in obtaining the Treaty. Chief Shinguaconse, like his grandfather, had fought as British ally. Chief Shinguaconse received medals for his part in the War of 1812, where he served alongside British officers, such as Peter Robinson, the brother of Willliam B Robinson. Chief Nebenaigoching received medals from British officers honouring his father, who had been killed in the War of 1812.

46. Mr. Morrison will explain that after the war, Chief Shinguaconse joined the Anishinaabe already living on the British side of the St Mary's River, at what became known as Sault Ste. Marie and Garden River. You will hear how Chief Shinguaconse consistently sought to protect his people by ensuring that they would be able to benefits from the changes that were happening in their territories. Chief Shinguaconse worked actively to protect the territory, regulating the fishery and timber cutting and the sale of timber. And you will hear how he, along with Chief Nebenaigoching and other Chiefs and Anishinaabe, consistently objected to actions of the British seeking to utilize or assert jurisdiction over Anishinaabe lands without first entering into a treaty arrangement.

47. Mr. Morrison has and will explain that on the first day that surveyor Alexander Vidal started surveying town plots at Sault Ste. Marie in 1846, Vidal wrote to the Commissioner of Crown lands that Chief Shinguaconse and Chief Nebenaigoching and others had visited him for the purposes of claiming the land as their own, and expressing indignation that he had been sent to survey it and that mining exploration licenses had been issued. Vidal was told to ignore their complaints as invalid. But Vidal would continue to receive the Anishinaabek's objections as he carried out surveys of the mining claims, and would encourage the government to address them.

48. Mr. Morrison will discuss in his oral testimony how Chief Shinguaconse, Chief Nebenaigoching and others, in an effort to protect their territory and their jurisdiction, turned away mining exploration parties who sought to be active on their Territory and that, as a result, mining companies complained to the government about the risk of bloodshed if the Indian claims were not addressed.

49. You will hear how the petitions and memorials and speeches made by Chief Shinguaconse, Chief Nebenaigoching and others, although translated into English and so not a perfect representation of the Anishinaabe perspective, make it clear that the Anishinaabek sought a treaty that would enable them to receive new benefits from the land which was becoming less productive for the uses to which it had traditionally been put.

50. Mr. Morrison's affidavit explains, and you will hear in his oral testimony, that Chief Shinguaconse wrote to the Governor General as early as June 1846, stating that he wanted to negotiate for the well-being of his people a share of the resources to be extracted from their lands. He wrote again to the Governor General in August of that same year and again in 1847, in the latter case explaining how the Anishinaabek had turned away mining exploration parties and were seeking a treaty on fair terms. Chief Shinguaconse and others met with the Governor General, Lord Elgin, on October 1847, again requesting compensation for the use of the land, and the Governor General promised them that justice would be done. The Chiefs met again with the Governor General in June 1848, again explaining that the Anishinaabek's lands had been taken possession of by mining companies, the hunting had been destroyed and the people needed compensation and a means of supporting themselves in the face of the changes that were taking place.

51. You will hear about how Thomas Anderson, a veteran of the war of 1812 and an Indian Superintendent that spoke Anishinaabemowin, who was on several occasions asked to report on

the Anishinabek's claims to the lands, concluded that their claims were valid and should be settled by Treaty.

52. Mr. Morrison will explain that in July 1848, Mr. Anderson was sent to speak to the Anishinaabek and collect information about their title and the compensation to be paid in relation to the lands. You will hear that at the Councils convened for that purpose Chief Shinguaconse is reported to have explained the negative impact on the Anishinaabek of the Crown incursions on their land, the Anishinaabek's belief that the resources on the land were put there to benefit the Anishinaabe, and the need for a Treaty. He is reported to have said that the Anishinaabe wanted "pay for every pound of mineral that has been taken off our lands, as well as for that which may hereafter be carried away."

53. Your will hear that similar statements were made by Chief Peau du Chat, of the Fort William First Nation. And you will hear that Anderson reported that there did not appear to be any doubt that the Anishinaabek were "the proprietors of the vast mineral beds and unceded Tracts, from Grand Bature near Missisaugeeng River on Lake Huron, to the Boundary line at Pigeon River on Lake Superior throughout which region numerous locations have been granted."

54. Mr. Morrison will explain that in 1848 some of the Anishinaabek retained Allen Macdonell, a Toronto lawyer with interests in the mining companies, to assist them, and that the lawyer drafted a notice warning mining companies not to enter into or cut timber from the Anishinaabe lands. At the same time, the Anishinaabek began to enter into their own mining leases, including with Macdonell, in order to try to get the benefits from the new uses of lands for their people.

55. Mr. Morrison's affidavit states and you will hear that in June 1849 Chief Shinguaconse and others met yet again with the Governor General, and that it is reported that Shinguaconse told Lord

Elgin yet again that the resources had been put on the Anishinaabek's lands in order to provide them sustenance when the fish and forests failed and that they had been waiting years for a treaty for the lands, so that there would be no bad feelings between the Anishinaabek and the British. The Governor General assured them that their concerns would be addressed, and told them that they should return to their homes, leaving Macdonell to look after their interests.

56. You will hear from Morrison about the Councils held by Anderson and Vidal, who were appointed in August 1849 to meet again with the Anishinabek and investigate their claims and ascertain their expectations for compensation. When they met with Peau du Chat, he asked for $30, per person, and the provision of a school master, a doctor, a blacksmith, a carpenter and an instructor in agriculture and Anderson replied that the demand for such a large annuity was unacceptable and excessive in terms of the value of their lands. When they met with Chief Shinguaconse and Chief Nebenaigoching, the Anishinaabe leaders freely answered questions about their territory, but said that they did not know the value of their lands, and asked Vidal and Anderson to speak to their lawyer, Macdonell. Vidal and Anderson refused to so do so.

57. You will hear that in November 1849, after years of petitions and meetings with the Governor General, after a Treaty had failed to materialize despite meeting with Anderson about the claims in 1848, and after Vidal and Anderson had refused to speak to the Chiefs' lawyer about their claims, Chief Shinguaconse, Chief Nebenaigoching, and other Anishinaabe, in the company of Macdonell and his brother and others, took possession of the mine at Mica Bay over which they asserted ownership and jurisdiction.

58. You will hear that in response, the government sent 100 troops. At the time, the Governor General specifically recognized that the failure to address the Anishinabek's claims before mining licences were issued was the underlying cause of the trouble, and this view was also expressed in

some newspapers. The vessel carrying the troops ran aground and was unable to reach the mine that winter. By December, the assertion of jurisdiction having been made, the main actors in the operation had turned themselves in. Within a month, Robinson was appointed to negotiate the treaty.

59. As Mr. Morrison has stated in his affidavit, in their report, also delivered in December, 1849 Vidal and Anderson said that the Anishinabek had customs that were "as binding as law" that gave the several bands each an exclusive right to control their own hunting grounds. Vidal and Anderson related that the Anishinabek were convinced that their hunting grounds afforded only a precarious supply of animals for food or furs, and that they had been diminishing. There was a general wish to have a treaty, as long as the Indians were not required to remove from where they lived, that their hunting and fishing not be interfered with and that they receive as compensation a perpetual annuity. Vidal and Anderson said that the Anishinabek were ignorant of the value of the land, with some asking for $30, $60, some $100 per person, which Vidal and Anderson said would require the government to fix the amount, having the most scrupulous regard to the Anishinabek's rights.

60. You will hear from Mr. Morrison that Vidal and Anderson felt that there was great difficulty in putting a value on what they called the "vast but sterile" territory, and suggested "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." And you will hear that this is precisely what Robinson did.

61. Mr. Morrison will explain that on December 10, the charges against those involved in the Mica Bay incident were thrown out by Chief Justice John Beverly Robinson, the brother of William Benjamin Robinson, then refiled by the Attorney General. The bail for the Defendants

was paid in part by SP Jarvis, the former Chief Superintendent of Indian Affairs and William Benjamin Robinson's brother in law. You will hear that sometime in December of 1849, or January of 1850 that William Benjamin Robinson, the MPP for Simcoe, former Inspector General in the government of the Province of Canada with a seat on the Executive Council, formerly the resident manager at Bruce Mines and prior to that a well-respected Indian trader, met with Macdonell, Chief Shinguaconse and Chief Nebenaigoching.

62. According to Morrison, Robinson then wrote to the Superintendent General of Indian Affairs, Robert Bruce, seeking assistance for the Chiefs to return to the homes and offering his services to settle the matter. You will hear that within days of this that Robinson was formally appointed as Treaty Commissioner to negotiate for the adjustment of the Anishinaabe claims "or of such portions of their claim as may be required for mining purposes."

63. The Commissioner of Crown Lands was to advance to Mr. Robinson the sum required which was to form a charge on the monies received from the mining locations. That same day Superintendent General Bruce wrote to Robinson, giving him notice of his appointment and agreeing to pay a sum for the Chiefs to return home.

64. You will hear how later on, Macdonell would write that the discussions in December 1849 set out the basis on which the treaty would be settled. In his letter to Bruce offering his services, Robinson had included a memorandum that has now been lost. It may be that the memo set out the outcome of those discussions between Robinson, Chief Shinguaconse, Chief Nebenaigoching and Macdonell.

65. Throughout his evidence, Mr. Morrison explains how the personal relationships of the Anishinaabe with the British officials representing the Crown influenced the course of events. You will hear how Chief Shinguaconse helped JW Keating, a former Indian department employee who

was married to an Anishinaabe woman, find the copper that Keating would later obtain a license to mine, while Keating acted as a translator for some of the correspondence sent by the Anishinaabe to the Crown, and ultimately was hired by the Crown as translator in the Treaty Council itself.

66. You will hear about Keating's friendship with SP Jarvis, who lost his job as Chief Superintendent of Indian Affairs partly as a result of the activities of George Vardon. You will hear that Keating, Jarvis and WB Robinson, who was Jarvis' brother in law, belonged to an older tradition than Vardon and those who would staff the Indian Department after Confederation were not a part of.

67. You will hear from Mr. Morrison that for Vardon, the needs of Indian Nations were often disregarded to the requirements of Indian Imperial policy, but for Robinson and others, their dealings with the Indian Nations were based on personal relationships, and grounded in mutual respect. You will hear that Keating repeatedly put forward the view, in various contexts, that the compensation for the Treaty should be tied to the value the government would receive from the lands.

68. Mr. Morrison explains that in mid-April 1850, Robinson asked for a further elaboration of his instructions, and was told the amount of money he had available. He was explicitly told not to talk of the Indian "presents" a longstanding practice, which it was clear the Imperial government intended to discontinue. He was told to negotiate for the entirety of the territory or, if that was not possible, the areas in which the mining locations were found.

69. According to Morrison, in May 1850, Robinson held a council with numerous Chiefs from the Sault Ste. Marie area and everyone agreed that the Treaty Council would have to include all the interested Chiefs. Robinson told them that he could not meet them in June or July, as they had

previously discussed when they had met in Toronto the previous winter, and offered to have someone else come sooner if the Anishinaabek didn't want to wait, but that they said they preferred to wait until Robinson could come.

70. Mr. Morrison explains that at about the same time, the trials of those charged in the Mica Bay incident were put over to the fall, which had the effect that the Chiefs and their advisor would be under criminal charges when the Treaty was negotiated. Also in May 1850, there were concerns that Macdonell intended to prosecute the writs that had been filed for damages for wrongful arrest associated with the Mica Bay incident, which had been previously served against the Indian Superintendent who had made the arrests and against others. Meanwhile, the government was expressing concern that Macdonell and others intended to occupy Michipicoten Island and eject the mining company who had purported to purchase the Island.

71. With regard to the Treaty Council itself, as Mr. Morrison sets out in his affidavit and will describe in his testimony, Robinson arrived in Sault Ste. Marie on August 18, 1850 and took up lodging on the US side of the river. Throughout the next two weeks, he visited the Anishinaabek who had arrived, especially the Lake Superior delegates from Fort William and Nipigon on numerous days. Chief Peau du Chat, one of the Lake Superior chiefs, was very ill, and Robinson arranged for doctors, clothing and even a quart of whisky to be delivered to the ailing Chief. The Governor General arrived and met with Robinson, and with his brother Robert Bruce, the Superintendent General of Indian Affairs.

72. You will hear that the Crown regarded the 1850 Treaty Council as so important that the Governor General himself -- Lord Elgin -- made a point of attending. This at a time when the province of Canada was just transitioning to responsible government and the Imperial Crown still retained jurisdiction over Indian Affairs, Lord Elgin was the highest ranking representative of the

Crown in British North America, a representative of Her Majesty the Queen. In a meeting, Robinson told the Governor General of his intentions with respect to the Treaty, and received his full approval. The Governor General met with several of the Chiefs and assured them that Robinson had "full power" to settle the matter.

73. You will hear that there were 21 chiefs present when Robinson presented the treaty terms on the first day of the Council, but that the full record of their speeches has since been lost by the federal government. We know that Chief Peau du Chat spoke first, indicating his willingness to treat and his request to have half of the money for the Lake Superior Anishinaabek. The following day, in providing his response, Chief Shinguaconse asked for an annuity of $10 per person. Robinson said the demand was too high, and that since a majority of the Chiefs present the previous day were in favour of the settlement, he would prepare the "treaties" for signature – this being the first indication that there would be two treaties, rather than one as originally planned. You will hear Mr. Morrison's explanation of why Robinson wanted the Lake Superior chiefs to treat separately and why they would have done so – to secure the agreement of the former to pressure the more obstinate Chief Shinguaconse.

74. Mr. Morrison will provide his opinion that throughout the treaty council, the value of the land and the money in the possession of the government in respect of its use was a matter of significant discussion. While Chief Shinguaconse continued to press for $10 per person, Robinson held fast the terms already accepted by the Lake Superior Chiefs, stating that the land was not of such a quality as to support such a high annuity. Eventually, after being read and explained again, the Lake Huron treaty was signed with only minor variations from that in the Lake Superior Treaty, variations that may have resulted from discussions between Robinson and Macdonell. In addition,

Robinson assured the Anishinaabek that the mining locations located in their settlement at Garden River would be cancelled.

75. You will hear that in Robinson's official report on the Treaty Council, he explained that he introduced the augmentation clause as an additional incentive, and as a way of dealing with certain "evil advisors" who had been making it difficult to get an agreement with the Anishinaabek. He said that the clause was "so reasonable and just" that he had "no difficulty in making them comprehend it."

76. Mr. Morrison will describe how shortly after the Treaty was signed, Captain Ironside was told that Chief Shinguaconse was nevertheless still deeply dissatisfied, and was considering going to England to petition the Queen directly. When asked about this, Robinson reiterated that annuity augmentation clause should satisfy any concerns. He specifically recommended that Captain Ironside "explain to such Indians as he meets with at any time, that part of the Treaty, which secures to them a larger Annuity, should the territory surrendered enable the Government to increase it without loss. "

77. Mr. Morrison will explain that a year later, in September 1851, Keating, who had served as a translator at the Treaty, translated a speech made on behalf of two Lake Huron chiefs. In that document, the chiefs thanked Lord Elgin for the annuities clause, which they described as providing that that the annuity would increase as the lands were sold or leased.

78. Mr. Morrison will share with the court his opinion is that the treaty augmentation clause was seen by both Robinson and the Anishinaabek as an explicit promise from Her Majesty. Mr. Morrison will explain his opinion that Robinson used the term he did – that Her Majesty may be graciously pleased to order a further sum – because the promise the clause contained was open-ended and continuing.

79. The language of "her Majesty pleases" was the language in which obligations or commitments of the Queen were expressed. As Mr. Morrison explains, the whole history of treaty making in what is now Canada was premised, from the beginning, on personal relationship between Indian Nations and the Monarch. By speaking on behalf of the Queen, Robinson did NOT intend that the promise would be one that might not be fulfilled or that it could be ignored. Indeed, he would have intended the opposite. Mr. Morrison's opinion is that Robinson was making it clear that the Queen's authority was behind the whole agreement, and that Her Majesty intended to deal with the Anishinaabek in a just and honourable way

80. In order to give context to this history of treaty making between the Crown and First Nations, we have included in Mr. Morrison's affidavit in this case his evidence in the Chippewas of Sarnia case. This consists of an overview of Imperial Indian policy and practice prior to 1850, and the rules governing treaty making in what is now Ontario. Mr. Morrison's discussion of this history focuses on the British Crown's perspective and discusses how the British organized their dealings and affairs with their Indian Nation allies.

81. The reason this evidence is at the back of Mr. Morrison's affidavit (and is summarized as the last part of his evidence here) is because it is offered not as proof of any material facts that are in dispute, but as part of the broader historical context in this case. The historical record makes it clear that the Indian provisions in the Royal Proclamation were regarded by Imperial officials as applicable and authoritative, and that with respect to the territory now known as Ontario, nowhere in North America were these provisions observed as strictly as they were here. But that is not in issue in this case. According to their pleadings, the Defendants do not dispute that the Crown considered itself bound to abide by the policies and practices embodied in the Royal Proclamation. And this is a concession that is well made – given the rulings of the Courts in that regard.

82. The plaintiffs arguments about the meaning of the augmentation provision do not, in our submission, require the Court to rule on the nature of the Royal Proclamation as a legal instrument or whether the Proclamation's provisions had legal force in Ontario at the time of the Treaty. Our point with respect to this historical evidence is that the whole history of treaty-making, and the policy of Indian Affairs under the Imperial government, was premised on a high-level, nation-to-nation relationship between the Indian Nations and the British Crown.

83. While the Indian provisions of the Royal Proclamation of 1763 recognizing Indian land rights are well known today, Mr. Morrison will explain that a key aspect of the Proclamation was that the colonial government had no power or authority over Indians and Indian lands. This matter remained strictly within the authority of the Imperial government and their appointed officials, such as Sir William Johnson.

84. In his affidavit, Mr. Morrison has provided a detailed explanation of the history of the evolution of the Imperial department of Indian Affairs under Sir William Johnson and his descendants who held the office of Superintendent of Indian Affairs until 1830. Time permitting, he will also speak to this in his oral testimony.

85. In 1850, both the Anishinabek signatories and William B. Robinson were deeply aware of the history of treaty making as a practice engaged in by the Imperial Crown, and the long-standing reasons behind it. Those reasons included the importance of ensuring that the interests of the Indian Nations and the British Crown were not overridden or contradicted by the interests of traders and settler colonial governments.

86. This understanding of the history and the nature of the relationship between the Anishinaabek and the British Crown is why William B. Robinson worded the augmentation

provision as a personal promise from Her Majesty the Queen, and not the provincial or colonial government.

CARL BEAL

87. Dr. Beal is an expert in economics with a specialization in indigenous economic development and economic history. Dr. Beal has filed affidavit evidence in this case and he will also provide oral testimony. His evidence speaks to the economic and historical context in which the Robinson Huron Treaty was negotiated. Dr. Beal will also discuss how economic concepts and principles can assist the Court in understanding the motivations of the parties in entering into the treaty and in giving meaning to the treaty terms. Dr. Beal will explain the implication of the "augmentation clause" and how this clause was likely developed and incorporated into the Treaty.

88. Dr. Beal will first set out the relevant historical and economic context in which the Robinson Huron Treaty was negotiated including looking at the terms from previous treaties negotiated between the Crown and First Nations.

89. Dr. Beal will also discuss the subsequent development of mining exploration, the encroachment on timber lands and the growing settlement of Europeans within the Robinson Huron Treaty area. He will outline the history of mining development and mining regulation in the area in the period leading up to the Treaty.

90. Dr. Beal will review the findings from the Vidal Anderson report including their statement that the Anishinaabek were ignorant of the value of the lands, requiring the government to fix the terms. Dr. Beal will explain that their report expressed particular concern about the ability to come to an agreement with Shinguaconse's people. Dr. Beal will also review Vidal and Anderson's findings about the value of the treaty territory. He will explain that they identified the difficulty

of coming to a fair and reasonable settlement given the expectation of the Anishinaabek and the poor prospects for development of the land. He will discuss their suggestion to address this by means of what Dr. Beal refers to as a "contingent agreement" – including a provision that might be added for an increase of payment upon the further discovery and development of any new sources of wealth. Dr. Beal will show that this clause was a marked departure from earlier Treaties, in that the amount of the annuity, whether a per capita or global basis was not a fixed sum.

91. According to Dr. Beal, contingent agreements are common in situations where the Parties may be unsure about or may even disagree about what the future holds. This uncertainty or disagreement is resolved through an 'if-then' agreement that specifies outcomes based on subsequent events. Dr. Beal will show that a contingent agreement may also be used to militate against the impact of asymmetrical knowledge between the parties.

92. Dr. Beal will then review the instructions provided to Robinson and the terms of the Robinson Huron Treaty. Dr. Beal will show that Vidal and Anderson and Robinson had considered the economic prospects of the territories and determined the main source of revenues they anticipated were revenues from mining locations. Dr. Beal will explain why Robinson's $4 figure may have reflected the expected prospective revenue to be obtained from mining on the territories, that is, on the future economic prospects as they were known at the time. The increase was promised, however, with respect to any sources of wealth in the territories, whether known or not, and so could rise beyond $4.

93. Dr. Beal will explain how Robinson believed that a Treaty was preferable to the alternative of no treaty and on-going issues regarding the disposition of revenues generated in the Treaty territories. Given the limited resources made available to him, and the expectations of at least

some of the Anishinaabe, the escalator clause represented sound fiscal management and was the means of reaching agreement.

94. Dr. Beal will provide his opinion that the annuity augmentation clause could not have been effective in bridging the disagreement between the parties with respect to value of the annuities unless it was understood that, if the wealth from the territory justified it, the annuities would be increased beyond $4. Dr. Beal will explain the economic concept of a "reservation price" and his opinion that the historical record demonstrates that Shinguaconse's "reservation price" was $10. A contingent agreement could only be effective in bridging the gap between the parties if it had the potential to ensure that the annuities would meet or exceed the reservation price. If the augmentation clause was meant to address the differing views about land value, it would have had to provide for annuities in excess of the $4, if circumstances warranted it. Chief Shinguaconse was no fool.

95. Dr. Beal will explain that if the reference in the annuity provision to "such further sum" means that the Crown has an unfettered discretion to refuse to increase the annuities over $4, regardless of the value extracted from the land, then the clause is meaningless in terms of any impact on the bargaining between the parties. If the Anishinaabe had understood that a portion of the augmentation as meaningless, then the augmentation clause could not have been effective in addressing their concerns about land value, which Vidal and Anderson and Robinson all understood was the purpose of the augmentation clause's inclusion. And, as Dr. Beal explains, Robinson himself indicated that the augmentation clause was in fact critical to the ability to obtain agreement between the parties. If the augmentation clause had that effect, it must have had at least the potential of addressing the Anishinaabek's expressed concerns, and this could not have been

the case if the reference to "such further sum" was meaningless and the annuity was therefore limited to $4.

96. Dr. Beal also addresses the question of how to determine what share of the wealth from the treaty territory is payable as annuities under the augmentation clause. First, he will explain that if the amount to be paid through the utilization of the augmentation clause was meant to provide a fair and reasonable payment for the land, then the treaty should ensure an exchange of more or less equal values. Dr. Beal will also provide his opinion that the revenues available for augmenting the annuities should be those that arise from the resources on the land, deducting the expenses associated with the collection of the revenues. He will also explain that it must be considered whether the Crown has foregone revenues it could have reasonably collected.

97. In terms of the division of the net revenues, Dr. Beal will provide his opinion that in the absence of a once and for all agreement, a contingent agreement that seeks to provide a fair price should lead to the Anishinaabek receiving the full net revenues associated with the use of the land. That would mean that the revenues would be dealt with in the same manner as when lands were surrendered to the Crown to be sold for the benefit of the Indians who surrendered them, which is how the Manitoulin Treaty of 1862 was structured. It is also how reserve lands are dealt with today through the surrender and sale process: First Nations get the full amount of the revenue. According to this scenario, the Anishinabek should have thus received all of the revenues derived by the Crown from the disposition of land and resources, minus necessary expenses for the collection and administration of those revenues.

98. As an alternative, Dr. Beal will explain the division of revenues if the treaty is seen as a sharing agreement, whereby the Crown and the Anishinabek agreed to share the revenues received from the use of the land. As a result, Dr. Beal will give his opinion that, if the treaty is seen as

an agreement to share resource revenues, the Anishinabek's share of the revenues should be no less than 50%.

THE ANISHINAABE PERSPECTIVE: EVIDENCE WITH RESPECT TO ANISHINAABE LANGUAGE, LAWS, GOVERNANCE

INTRODUCTION

[David Nahwegahbow: Boozhoo, Giizhgaanung N'dishnikaus; Mahiingun N'dodem. My Anishinaabe name is Giizhgaanung, which means Daystar, and I am a member of the Wolf Clan. I want to acknowledge the traditional territory of the Fort William First Nation]

99. Over the next several weeks you will hear this form of introduction from Anishinaabe witnesses appearing before you. These will include highly respected Gchi-Anishinaabek (Elders), Ogimaak (Chiefs) and experts in Anishinaabe laws, governance, and treaty-making, as well as experts in Anishnaabe ethnohistory.

100. As Anishinaabek and experts knowledgeable in Anishinaabe ways, they have been invited to share with your Honour their knowledge and stories. In sharing this knowledge, their intentions are to inform your Honour about the Anishinaabe perspective of the Robinson Huron Treaty. In order to see the Treaty from the Anishinaabe perspective, your Honour will need to get a sense of Anishinaabe law, language, culture, and political traditions.

101. Building on the opening remarks of my co-counsel, Mr. Arvay, I propose to put forward six propositions about the Anishinaabe perspective, which I believe will be helpful to you in interpreting the Treaty, more specifically the augmentation clause. After that, I propose to briefly review some of the evidence of our Anishinaabe perspective witnesses, after which I will provide some concluding remarks.

SIX PROPOSITIONS REGARDING THE ANISHINAABE PERSPECTIVE TO ASSIST THE COURT IN INTERPRETING THE ROBINSON HURON TREATY

(1) Treaties are bi-cultural and bi-juridical instruments, and as such need to be understood from the perspectives of both signatories, not just one. Courts have generally been able to figure out the non-Indigenous perspective, it is the Indigenous perspective that is hard to put a handle on. The Robinson Huron Treaty and the augmentation clause in particular, needs to be understood from the perspective of Anishinaabe people, meaning their language, culture and their laws. The worldviews of Anishinaabe people are different, the culture and language is different and in 1850, there would not been a perfect match between the written text of the treaty, the discussions in English and the Anishinaabe understandings.

(2) In 1850, a paramount consideration for Anishinaabe peoples was their connection and relationship with the land. The land is infused in every aspect of Anishinaabe life and culture, including their spirituality, livelihoods, ceremonies, sacred stories – known as Andsokaanan -- and doodemag relationships. For the Anishinaabe, there was no such thing as "estates in land", such as fee simple title; the land -- Mother Earth – had human qualities; people were seen to belong to the land and not vice versa. Anishinaabe people inherited or were gifted the land from the Creator and it was inconceivable to ever abandon the land. On death, people return to the land.

(3) Relationships between and amongst people, as well as the animals are also highly significant, and can be seen as an overlay on top of connections with the land and waters. Relationships can cut across blood and family relations, they can cut across and interconnect communities: these include doodemag relationships and fictive relations. These inter-personal or human relationships, drive other aspects of social relations

including trade and economics, which are subordinate to "relations". In other words, maintaining relationships is more important than money. New-comers were incorporated into this social organizational system of "relations" when they arrived in Anishinaabe territory. First the French and then the English, came to be adopted as "fictive kin with responsibilities that corresponded with the status of the relation. So, for example, the Queen or the Governor would have come to be known as Great Mother or Great Father, not as a form of adulation or obsequiousness, but as a form of respect, to which would attach responsibilities and duties of fairness and care that came with that position of a Mother or Father.

(4) With regard to treaty-making, the Anishinaabe perspective can be discerned from the historical context prior to 1850, and the picture that emerges is a system of diplomatic relations, protocols, metaphors, mnemonic devises such as wampum belts and medals -- such as those exchanged at Niagara in 1764 -- which define how those in treaty are supposed to govern themselves in treaty-making and in maintaining the treaty relationship. According to the Anishinaabek, treaties are sacred, entered into after great spiritual and community deliberation, consensus-building and are then sanctified by ceremony. Such arrangements are not entered into lightly, but once they are, must be honoured in the spirit and intent. The important principles in treaty relationships are respect, renewal, mutuality, reciprocity, generosity and sharing and giving. It is also evident from the historical context that the Crown understood and subscribed to these Anishinaabe "customs and usuages" in its treaty relations with Anishinaabe peoples in the period prior to 1850. The best example of this is Sir William Johnson, the first Minister of Indian Affairs.

(5) The Anishinaabek in the period leading up to 1850, and as at 1850, were organized societies, with their own laws, and capable of entering into treaties. Anishinaabe law comes from a variety of sources and varies in nature, from sacred law to natural law, to deliberative laws. Laws can be discerned from sacred stories – Aansokaanan. They come from ceremonies, they govern use and care of the land and relationships with the people and animals. Treaties are a form of laws – Chi-Naknaagewin. An example of Anishinaabe law is what has been called the Seven Grandfather Teachings, which also would have governed the Anishinaabe perspective and meaning of the annuity augmentation clause:

1. Respect
2. Love
3. Truth
4. Honesty
5. Humility
6. Wisdom, and
7. Courage

(6) The sixth proposition is really an application of the five foregoing propositions to the questions: What does the augmentation clause mean? How would it have been understood by the Anishinaabek? Should the clause be interpreted narrowly to limit increases in annuities, even if revenues are such that to do so would not result in a loss? Would the Anishinaabek in 1850 have understood and accepted that the augmentation clause gave total discretion to the Crown to say "I'm only going to give you $4.00 even though I can pay you more without incurring a loss?" Would the Anishinaabek have understood that by signing the treaty they once and for all extinguished their connection to their land and all rights and benefits deriving from it? It is pretty clear that that clause would not have been understood in that way from the Anishinaabe perspective, because:

- It is not consistent with “respect”, or “love” or “truth” or “honesty”;
- It is not consistent with maintaining a connection with the land;
- It is not consistent with the principles of reciprocity, mutuality, generosity and sharing that are central to treaty-making and treaty relationships;
- A narrow “frozen-in-time view of the treaty is not consistent with the principle of renewal;
- It is not consistent with the responsibilities of fairness, and care associated with the role of a Great Mother; and
- A narrow interpretation of the treaty augmentation clause, which brings harm and unfairness will create disharmony to the relationship.

ALAN CORBIERE: METAPHORS, SYMBOLS, CEREMONIES AND MNEMONIC DEVICES

102. Alan Corbiere has provided an affidavit in this case and you will also hear his oral testimony. Mr. Corbiere is from M’Chigeeng on Manitoulin Island, an ethnohistorian with a particular expertise in the use of metaphors, symbols, ceremony and mnemonic devices in treaty-making between the Anishinaabe and the British Crown during the eighteenth and nineteenth century. Unlike many ethnohistorians, he has an additional strength: he speaks, reads and writes in Anishinaabemowin. Mr. Corbiere will address the historical context of the relationship that was renewed in the Robinson Huron Treaty. In particular, Mr. Corbiere’s testimony will address how the Anishinaabek signatories would have understood that history, and how their understanding of that history would have given significance or meaning to the Crown’s continued use of those earlier treaty-making protocols in 1850.

103. Drawing from the Anishinaabek Aaadizookaanag (sacred stories), Mr. Corbiere will tell us about the origins of the Great Lakes Area Treaty-making protocol which pre-dates contact with the British. Through this origin story, Mr. Corbiere will explain the long-standing significance to Anishinaabek of specific geographical places such as here, Thunder Bay, and Baawating (or Sault Ste. Marie). Mr. Corbiere will also explain the multi-layered meaning of Ishkode (fire) and how it informs the Council Fire system of governance that serves as the central forum for Treaty negotiations.

104. A point needs to be made about the particular methodology of Mr. Corbiere. It involves working with the same written record that many other historians examine and interpret in different ways. What makes Mr. Corbiere's expertise and testimony unique in this case is that he uses an ethnohistorical method that is particularly attuned to the specific intricacies of the Anishinaabek from the Great Lakes area. This method allows him to tell this history from the Anishinaabek perspective through a descriptive and rich examination of the metaphors, symbols, ceremony, wampum belts and calumet pipes that are featured throughout the written historical record of this period.

105. By taking this approach, Mr. Corbiere uncovers an understanding of history that cannot be drawn from a simple literal reading of the written record. What Mr. Corbiere gives us is a more fulsome narrative of the mutually understood metaphors and ceremonial protocols that served as the mechanisms through which peoples from different Nations and cultures could communicate and establish or renew alliances of peace and friendship. Through this rich narrative, the promises and principles embedded in the Great Lakes Area treaty-making protocols, are revealed.

106. These protocols included specific ceremonies, gifts and a common metaphorical language that was developed prior to the arrival of Europeans through encounters with other Indigenous

Nations and alliances, like the Haudenosaunee Confederacy. For many years, the Anishinaabek were at war with the Haudenosaunee. These wars caused the displacement and migration of many Anishinaabek, Nipissing, Petun/Wendat and Huron alike. Eventually, the Anishinaabek fought back and reclaimed their territories in the southern Great Lakes area.

107. The Haudenosaunee sought to make peace with the Anishinabek by giving them a wampum belt at Bawaating (*[not]* Sault Ste. Marie, as you will hear from Elder Irene Stevens), an important place for Anishinaabek peoples where they fish, feast, council and socialize. The symbols and images in this belt were accompanied by a "talk" which codified the recognition of the various Anishinaabe clans as true owners of different places around the Great Lakes.

108. It was through diplomatic encounters such as this that a highly metaphorical language was developed to establish and renew relationships of peace between Anishinaabek and other foreign nations. The rich array of metaphors included both visual and verbal forms. Visual metaphors included the portrayal of doodemag, as well as the beading of various geometric shapes, lines and rows into wampum belts. These represented the political geometry of nodes and council fires which had been woven together through the creation or renewal of alliances and kinship ties.

109. Prominent verbal metaphors included "fire" to represent council sites, "warmth" to represent gifts and generosity which, from the Anishinaabe perspective, were exemplary of good and capable leadership. The use of fictive kinship terms such as "Brethren" and "Father" were also instrumental for diplomacy between nations. As Mr. Corbiere will explain these fictive kinship terms were necessary to first recognize European newcomers under Anishinaabe laws.

110. From his description of the foundations of the treaty-making protocols, Mr. Corbiere traces the development of the European understanding and eventual adoption of this protocol to form alliances with the Anishinaabek and other Indigenous Nations. Specifically, Mr. Corbiere details

the early use and adoption of the treaty making protocol by the various European Nations that sought to form alliances with Indigenous Nations in the late-seventeenth and first half of the eighteenth century.

111. It was during the period of the seventeenth century that the alliance known as the "Covenant Chain" emerged, to symbolize the nation-to-nation relationship, initially with the Dutch, and then between the British Crown and the Haudenausonee, and then the Western Confederacy, including the Anishinaabek.

112. A fact that is not disputed is that this period was marked by intense competition, and later war, between the European Nations vying to control the fur trade and eventually access to lands and resources. Against this backdrop, Mr. Corbiere provides numerous examples of how the French, and later the British, came to learn and master the nuances of the Treaty-making protocols during this period.

113. An early example of the French, examines how the French Governor Callière carefully and deliberately used the metaphors, mediums and protocols of treaty-making to secure the Great Peace of 1701 in Montreal. Through this example we see the deep significance of ceremonial protocols such as feasting, gift exchange and smoking the calumet pipe.

114. An early example of the British, is the making of their alliance with the Odawa at the Onondaga council fire in 1710. The written records that capture this meeting provide a rich example of the use of mutually understood metaphors, such as kinship terms, and the solemnity of ceremonial protocols such as the smoking of the Pipe.

115. Notably, all of these important details are found in the historical record of these events. What brings their meaning and significance to the surface is the careful attention and knowledge of the Anishinaabe perspective.

116. Over the first-half of the eighteenth century, competition in the fur trade between the British and the French would eventually escalate into war. This scene provides the backdrop to what we now refer to as the Seven Years War, the Royal Proclamation of 1763 and the Treaty at Niagara in 1764.

117. In telling this history, Mr. Corbiere pays careful attention to the influence of the geo-political tensions that existed between the different Indigenous Nations who were in alliances with the French or British. Emerging from the shifts that mark this period of history is a key character: the British military officer and diplomat, Sir William Johnson.

118. Sir William Johnson is most frequently associated with his role in representing the British Crown at the Treaty at Niagara in 1764. However, Mr. Corbiere situates Johnson's role at Niagara in his formative years, almost two decades prior, when Johnson spent time studying the existing records of the development of the Covenant Chain, as well as spending time in the Longhouse through his long-standing personal and kinship relationship with the Haudenosaunee.

119. Mr. Corbiere explains how this foundational knowledge allowed Johnson to understand how the highly contextualized diplomatic language and discourse operated to develop a mutual understanding through a shared set of metaphors. Mr. Corbiere explains how this knowledge and experience allowed Johnson to understand how information about locations, historical events, principles, promises and values were intricately codified into the speeches and the mnemonic devices such as wampum. Mr. Corbiere explains how this knowledge allowed Johnson to understand the delicate and intricate process and protocols that were required.

120. Mr. Corbiere will refer to Anishinaabek encounters with Sir William Johnson in the years leading up to the pivotal event that would transpire at Niagara. Mr. Corbiere explains how Johnson, and his Deputy George Croghan made careful and deliberate use of the treaty-making protocols in 1760 and 1761 at Detroit to rectify a serious miscalculation by the British General Amherst in the wake of the British defeat of the French. In explaining this, Mr. Corbiere discusses what Johnson and Croghan knew about the Anishinaabek understandings of the consequences of this miscalculation and what forming an alliance in remedying that gaffe would mean.

121. Mr. Corbiere explains that Johnson relied on this knowledge to successfully light Council Fires at Detroit, Michilimackinac, La Baye and St. Josephs by 1762. Through these actions, Sir William Johnson was extending the Covenant Chain relationship. Mr. Corbiere explains how this is evident from the metaphors and symbols that are encoded throughout the speeches made by the British to the Anishinaabek during this time.

122. Mr. Corbiere also explains the development of Johnson's Indian policy in the years that followed and the efforts he made to convince the Board of Trade that this policy should be implemented. This is told in the context of the repeated gaffes being made by different British officials who failed to understand or appreciate the foundational importance of the treaty-making protocols. In other words, although Johnson was knowledgeable, overall the British were learning from their mistakes during this time. Unfortunately, some of their mistakes had deadly consequences.

123. The most striking example is the taking of Fort Michilimackinac in 1763 as part of the violent period now referred to as Pontiac's War. It is in this context of war that the Royal Proclamation of 1763 was hastily drafted by the Board of Trade during the summer of 1763,

proclaimed by King George III in October and arriving in the Americas in December of that year to be implemented.

124. Mr. Corbiere explains how the Great Lakes area during this period was marked by volatility and distrust. Words and actions, on both sides, were carefully chosen and enacted. It was in this context that the recalcitrant British General Amherst was recalled and replaced by General Gage who was a strong proponent of Sir William Johnson's knowledge and understanding of the treaty-making protocols.

125. Mr. Corbiere covers the discussions between Gage and Johnson as they set in motion Johnson's plan to hold a large gathering at Niagara for the purposes of establishing a lasting peace. During this time, messengers were sent to all the Nations inviting them to attend at Niagara in the summer of 1764.

126. The efforts that the British took during this meeting are recorded in the papers of Sir William Johnson. By applying his ethnohistorical lens and rich knowledge of the Anishinaabek language and perspective, and the metaphors, symbols, mnemonic devices and ceremonial protocols, Mr. Corbiere's analysis of these written records reveal what a literal interpretation often overlooks as simplistic.

127. In unpacking the significance encoded within the key terminology and devices of the treaty-making protocols, Mr. Corbiere's evidence provides us with the Anishinaabek understanding of the Treaty at Niagara in 1764 and the nature of the relationship that was forged or renewed there between them and the British Crown.

128. Specifically, Mr. Corbiere explains that through the Treaty at Niagara, the Anishinaabek understood that the British Crown had formalized an enduring nation-to-nation relationship that

promised to recognize and respect the freedom, autonomy and land rights of the Anishinaabek. A key demonstration of this promise and recognition was the annual delivery of presents. In the decades that followed, this promise was faithfully adhered to by the British. However, it is key to understand that the relationship was not reduced to one party giving presents to the other in perpetuity.

129. Mr. Corbiere explains that the relationship was based on the mutual exchange of presents of equal value. In return for presents, the British had a strong alliance that they could rely on for both the security of trade and military campaigns. Thus, Mr. Corbiere explains that the British continued to invoke the inherent obligations of the alliance by calling the Indigenous Nations to go to war with them against the Americans, during the American Revolution and the War of 1812.

130. In the years after and immediately leading up to the Robinson Treaties, Mr. Corbiere explains that as the military instability of the region subsided, the British Crown began to neglect its commitments and the careful attention to the nuances of the treaty-making protocols, which were the core characteristic of Johnson's Indian policy.

131. What Mr. Corbiere makes clear is that this neglect was not reciprocated by the Anishinaabek who continued to invoke the treaty-making protocols in their relationship with the British Crown. Although the British began to neglect their commitments, they did not cease to understand them. This is demonstrated by the continued adherence to these protocols by the British Crown and the continued use of the metaphorical language in several treaties in the nineteenth century, including the Robinson Treaties of 1850.

132. At the time, the Anishinaabek signatories were entering into negotiations for what would become the Robinson Huron Treaty, Mr. Corbiere, and other experts will explain that the British Crown's consistent and continued performance of the treaty-making protocols for over a century,

would have been understood as a renewal of the continued commitment to the long-standing Treaty relationship and the promises, obligations and expectations that had always been a part of it.

133. In return, the Anishinaabek would have expected the Crown to be under an obligation to share the wealth generated from the territory equitably, fairly and justly. They would have expected the Crown to fulfill this obligation in accordance with the principles of the treaty relationship.

DR. HEIDI BOHAKER: ANISHINABEK POLITICAL GEOMETRY, DOODEM IDENTITY AND TREATY RELATIONSHIPS

134. You will hear from Dr. Heidi Bohaker, an historian and expert in Anishinaabe governance and treaty relationships. In this case, Dr. Bohaker will speak to the perspective of the Anishinaabek signatories to the Robinson Huron Treaty. In particular, Dr. Bohaker addresses how the Anishinabek signatories would have understood the augmentation clause.

135. Dr. Bohaker will explain that to get inside the understanding of the Anishinaabek signatories, we must first examine two key concepts: Anishinabek Political Geometry and the Anishinaabe doodem tradition.

136. Dr. Bohaker describes Anishinabek political geometry as consisting of a rich and complex network of kinship and alliance lines which emanate from, and are interconnected with, council fires (ishkode), Aadizookaanag (oral traditon/sacred stories) and specific geographical locations.

137. Of the many striking features of Anishinaabek Political Geometry, one of the most important is its impressive ability to be adaptable to scale and jurisdiction, yet remain foundationally consistent in an ever-changing world. Thus, on the one hand it is adaptable to many different levels and sizes of governance and political leadership. On the other hand its core principles, values and metaphors remain consistent across time and space. Dr. Bohaker provides many examples of this. For instance, the Council fires can encompass various levels of governance,

from local to regional to confederacy or international alliances. Yet, the nature, understanding, protocols and language used at the Council fires remains consistent.

138. This adaptability and consistency is similarly seen in the Anishinaabek concepts of leadership roles which can range from Gichi-Anishinaabe of Indinaakonigewin (winter hunting family groups) to Ogimaag of specific council fires to Gichi-Ogimaag who were listened to by people from a much larger region. Although there are many different leadership roles, the core values of Anishinaabek leadership remain consistent. Anishinaabe leaders are recognized by their qualities of vigilance, generosity and ability to safely handle and balance powerful forces in the world.

139. This multi-vocal, adaptable and highly complex political structure highlights a key aspect of Anishinaabek political geometry, which is its non-hierarchical understanding of leadership and authority. Anishinaabe leaders do not hold or exercise exclusive authority or executive power over their own people without consent.

140. A centerpiece of Anishinaabek political geometry, which Dr. Bohaker will describe, is the doodem tradition; a kinship category that allows individual Anishinaabe to quickly identify themselves and each other within the complex network of relationships. Dr. Bohaker will explain that "doodem", as a concept and kinship category, translates awkwardly into English because its use in Anishinaabemowin is always in a possessive form.

141. That is, it isn't an object unto itself, but rather its use in Anishinaabemowin always connotes a specific set of relationships. Because of this, it doesn't equate to dominant English concepts of kinship which are typically thought of as blood-ties or equivalent to "family" and "ancestry". In direct contrast, doodem, as a kinship category is much broader. This is demonstrated through its deeply embedded nature which allows Anishinaabek to maintain the kinship category

over long spatial distances and throughout time. Thus, the origins of the doodem tradition, and the complex information it contains, are well maintained by Aadizookaanag (oral tradition/sacred stories).

142. After setting out a foundational grasp of Anishinaabek Political Geometry and Doodem Identity, Dr. Bohaker will then explain how these underpin the basis for the Treaty protocol (the process of establishing and renewing Treaty relationships) and informs the inherent expectations and responsibilities under Anishinaabe law (the substantive obligations of the Treaty relationship).

143. Dr. Bohaker will explain that the first principle of establishing a relationship or alliance through treaty with non-Anishinaabe people requires the non-Anishinaabe to become kin. This may occur over time through intermarriage, but it often occurred through the creation of fictive kinship expressed through metaphors. An important point that Dr. Bohaker will make clear is that the use of kinship metaphors and alliances was often misinterpreted by scholars and eyewitnesses who grounded their interpretation of these concepts in a European normative political framework. That is, they assumed that Indigenous peoples understood alliance and kinship in the same way that Europeans did.

144. The second principle is the mutual exchange of gifts or presents. Through this act of giving and receiving, the parties to a treaty relationship demonstrate their ability to take care of each other and acknowledge their reciprocal interdependence. By continuing to give and receive presents, the parties renew the treaty relationship and continue to demonstrate this principle of interdependence and mutual care. An important point that Dr. Bohaker will make clear is that presents were not just one-way exchanges from Europeans as is predominantly depicted. To the contrary, the formal exchange of gifts was mutual and of equal value. With respect to value, Dr. Bohaker will give particular attention to explaining how the value of a finished product such as a

beaver robe, or beaded boots accounts for the community resources required such as the manual labour of the women making them and the long-term collective effort to save and stockpile furs.

145. The third principle is the recognition of autonomy. Dr. Bohaker will explain that autonomy (both personal and communal) was always respected within the Treaty protocol and relationship. Entering into alliance with another nation did not result, nor did it require one to be subjected to the other, or for one to be exclusive to the other.

146. Dr. Bohaker will explain that while the European concepts of property, contract and discretionary Crown authority might have been crudely known to the Anishinaabek signatories in 1850, they would have nonetheless understood the treaty negotiations and their relationship with the British Crown through the values, principles and obligations underlying their systems of governance and the Treaty-making protocols. Unlike the newly introduced British concepts, both their system of governance and the Great Lakes Treaty-making protocols had been in use by the Anishinaabek for hundreds of years at that time. As Dr. Bohaker and other experts will explain, the British themselves had also been using the Treaty-making protocol themselves for over a century at that point. In this case, there is no question that the Robinson Huron Treaty was negotiated in accordance with Anishinaabek law and the Treaty-making policy and practices of the British Crown. This means, at a minimum, that the negotiations took place at a Council fire using the Treaty-making protocols.

147. Dr. Bohaker will explain that as a result, the Anishinabek signatories would have understood the Robinson Huron Treaty augmentation clause as a treaty obligation which required the Crown to increase the annuity to an amount that was consistent with their expectations of the mutual exchange of presents of equal value and conceptions of leadership that required the stronger

party in the alliance to provide for and be generous to those to whom they owed a duty to take care.

DR. HEIDI STARK: ANISHINAABE LAWS AND STORIES

148. An affidavit has been provided by Dr. Heidi Stark, and she is also scheduled to give oral testimony to the Court. She is an expert in Anishinaabe law. Specifically, Dr. Stark specializes in how the Anishinaabe legal order informed how the Anishinaabek of the Great Lakes area would have understood the treaties that they entered into with the colonial powers, such as the United States and the British Crown or Canada. Dr. Stark will speak to the perspective of the Anishinaabek signatories to the Robinson Huron Treaty. In particular, Dr. Stark addresses how the Anishinaabek signatories would have understood the augmentation clause, in light of Anishinaabe law.

149. Dr. Stark will first explain the fundamentals of Anishinaabe legal philosophy, particularly the various sources of Anishinaabe law, which is fundamentally different from British common law and Canadian law.

150. Dr. Stark will explain that the very word "Anishinaabe" captures the creation of the people and the Creator's act of lowering them to the earth. The term Anishinaabe embodies the sovereignty of Anishinaabek and the lands and waters that are their inheritance. To identify as Anishinaabe, and to invoke the relationship that Anishinaabek have with creation, is to assert this sovereignty and inheritance.

151. Dr. Stark will explain that Anishinaabe law is sourced in sacred law, natural law, deliberative law, positivistic law and customary law. These categories overlap and inform one another. For instance, Anishinaabe Aadizookaanan (sacred winter stories) are a source of sacred law. These are stories about Nenabozho (the Trickster who is often referred to as the original

human). The stories chronicle Nenabozho's earliest interactions with Creation. Anishinaabe engagement with each other and with creation, is a source of natural law. Thus, the stories about Nenabozho express or convey underlying rules and norms about how Anishinaabe should govern their relationships with each other and with creation.

152. Dr. Stark will explain that Anishinaabe law has governed the relationships between human and non-human beings since Creation. The rules and norms which governed these relationships were often set down in the form of treaties. In Canadian law, treaties are typically understood as agreements or bargains between humans, and more specifically, human nation states. Under Anishinaabe law, treaties are not so narrowly construed. Treaties are fundamentally understood as relationships whose purpose is the creation and maintenance of peaceful and respectful co-existence.

153. In her testimony, Dr. Stark will give several examples of treaty relationships that exist between Anishinaabe and non-human nations, such as the Hoofed Nation, the Beaver Nation and the Star Nation. Under Anishinaabe law, these treaty relationships impose obligations and expectations on all the parties to the treaty.

154. The stories that capture these treaty relationships talk about the process of negotiation that took place and the resulting arrangements. These treaty relationships are an example of deliberative law. As a form of deliberative law, treaty relationships are meant to be continuously updated so that they remain relevant to the ongoing changes in the contemporary world.

155. Dr. Stark will explain that ever since creation, the Anishinaabek have had to learn to adapt to an ever-changing world in order to survive. Anishinaabe law contains the rules and norms that have allowed the Anishinaabek to survive. The obligations and expectations embedded within the treaty relationships are part of Anishinaabe law.

156. Dr. Stark will tell us that long before the arrival of Europeans, Anishinaabe have been participating in treaty relationships with a vast array of human and non-human nations. Anishinaabe have long understood the complexity of living in a multicultural and multinational world.

157. Anishinaabe were here when the Europeans first arrived. Anishinaabe law pre-existed the arrival of Europeans to Turtle Island. As the law of the land, Anishinaabe law governed the first encounters between Anishinaabek and Europeans. Anishinaabe law governed these encounters, and the relationships which grew from these encounters for centuries. As these relationships endured they became treaty relationships.

158. Dr. Stark will explain that the earlies treaties between Anishinaabek and Europeans were not captured in written documents (positivistic law), but were captured through formal diplomatic ceremonies lasting several days. These formal ceremonies were specially marked by exchanges of presents, ceremonial protocols and promises of friendship and peace.

159. Under Anishinaabe law, the treaty is not just a written document that captures the outcome of a series of negotiations. Treaties are not static and immutable. Treaties are fundamentally a relationship. They are dynamic requiring constant renewal. They were always contingent on the fulfillment of obligations by the parties to the relationships. Thus, a treaty consists of the entire council proceedings, as well as the preceding events which mark the development of the proceedings, and the successive events which mark the implementation of the relationships.

160. While the terms of a treaty relationship with a European nation varied considerably depending on the circumstances and nature of the deliberations, the purpose of a treaty was always establishing or renewing a peaceful and respectful co-existence. This consistency of purpose is reflected in the principles of treaty relationships: respect, responsibility and renewal.

161. Dr. Stark will explain that when Anishinaabek entered into treaty relationships with the European powers, that they invited those newcomers into the pre-existing array of relationships that Anishinaabek had with the rest of Creation. Under these treaties, the European newcomers became kin relations. They were introduced into the complex network of kinship that underpins the entire Anishinaabe legal, political and social order. As kin, Anishinabek and European newcomers alike were bound by inherent expectations and obligations.

162. These expectations and obligations anchor the interdependency between the parties to the treaty relationship. This interdependency ensures that all the parties will mutually benefit from the treaty relationship. Consistent with the fundamental purpose of a peaceful and respectful co-existence, the treaty relationship ensures that all parties will continue to be sustained; that their cultures, languages, modes of living and relationships with Creation will not be threatened or destroyed.

163. Dr. Stark will explain that the Anishinaabek signatories would have understood the Robinson Huron Treaty as the renewal of a treaty relationship with the British Crown that had been ongoing for almost a century. The Anishinaabek signatories would have understood that the renewal of this long-standing treaty relationship was based on the principles of respect, responsibility and renewal and that it affirmed all of the pre-existing relationships that they had with Creation.

164. The Anishinaabek signatories would have understood that the purpose of the Robinson Huron Treaty was to renew a peaceful and respectful co-existence over the Treaty territory where both parties would mutually benefit and be sustained by the bounty of the land.

165. Dr. Stark will explain that the Anishinaabek signatories would have understood the promise of annuities, and the augmentation clause in particular, as consistent with everything they

understood a treaty relationship to require. Anishinaabe law holds that generosity will yield greater gifts to the gifter. The Anishinaabe had invited the Crown into a sacred relationship with Creation and to share in the bounty of the land -- their very inheritance. Under Anishinaabe law, this was the greatest gift that the Anishinaabek could give to the Crown.

TESTIMONY OF THE ELDERS

166. Last but not least, you will hear the testimony of the Elders. In Anishinaabe society, Elders are highly respected. Elders embody the Seven Grandfather teachings, including honesty, wisdom, humility and courage. Elders are knowledge-keepers. Unfortunately, there are not a lot of Elders in Anishinaabe communities today, and even fewer who are prepared to come to Court to testify in an environment that is intimidating and that has not always been friendly to Anishinaabe people. In Anishinaabe communities, the capacity to retain and transmit traditional knowledge, culture and the Anishinaabemowin language has been impacted by Indian Residential School. As we now know, these impacts have been inter-generational. Nevertheless, Anishinaabe people are resilient, and despite the impacts, we have four Elders who are ready to share their knowledge with the Court.

167. Of course, being old does not necessarily make you an "Elder". There needs to be demonstrated commitment to live the principles of piimadzawin or mnamaadzawin – to live a good life -- and the Seven Grandfather Teachings. There has to be community recognition of the knowledge and values that come with the responsibility of being an Elder. The Elders we will be bringing forward to give testimony in this case, will be introduced to the Court by Anishinaabe community leaders. Two of the Elders will provide Anishinaabemowin translations of the Robinson Huron Treaty.

ELDER RITA CORBIERE: ANISHINAABEMOWIN

168. You will hear from Elder Rita Corbiere, from Wiikwemkoong, a highly respected Anishinaabe Elder who is recognized for her knowledge of Anishinaabe traditional values and her abilities in Anishinaabemowin -- the Anishinaabe language. In this case, Elder Corbiere will talk about the Anishinaabe values that would have informed the translation of the written text of the treaty from Anishinaabemowin to English and the understanding that this would have carried.

169. Elder Rita Corbiere will explain the significance of the Seven Grandfather Teachings and certain ceremonies. She will provide a translation of the Robinson Huron Treaty and explain how Anishinaabe values and language would have informed how the Anishinaabek signatories would have understood the terms of the Treaty.

170. Elder Corbiere will explain that Anishinaabemowin is very different from English. It is impossible to interpret or translate the English treaty text word-for-word. Further to this, Anishinaabe people think and act differently. Therefore, the interpretation or translation of the English treaty text must be consistent with Anishinaabe cultural and spiritual values.

171. Elder Corbiere will say: The words that would have been used in Anishinaabemowin to translate the written treaty terms, "surrender, cede, grant and convey unto Her Majesty" are: *"giibgitnamowaa'aan Gchi Gimaa Kwen ada akiimwaa"*. The word *"giibgitnamowaa'aan"* means "to let go to Her"; and "*Gchi Gimaa Kwen"* means Great Chief Woman; and "*ada akiimwaa"* means "their land". But, this does not mean letting the land go completely or forever.

172. According to Elder Corbiere, there is no equivalent Anishnaabe word for "title" to land as it is understood in English. The land was a gift from the Creator and the relationship with the land is sacred. The Anishinaabe would not give up their relationship with the land.

173. Elder Corbiere will explain that the Anishinaabek signatories would have understood the promise of annuities and the augmentation clause as an obligation on the Crown to act in the ways that people, and in particular, great leaders, are expected to act. The Anishinaabek signatories would have understood that if the treaty territory made enough money, that the Crown would be generous and honourable by giving a fair share to the Anishinaabek as long as the Crown did not lose money. The Anishinaabek signatories would not have understood the augmentation clause to mean that the Crown would, or even could, refuse to increase the annuity if the territory was making enough money. Such a meaning would not be generous, fair, respectful or honourable, and it would contradict the core values of the Anishinaabek.

ELDER FRED KELLY: ANISHINAABE LAW AND ANISHINAABEMOWIN

174. You will also hear from Elder Fred Kelly, a highly respected Anishinaabe Elder from the Treaty 3 area. Elder Kelly is a member of the Midewin Society, the Anishinaabe spiritual and medicine society. He has served as Elder in various organizations, including Treaty 3, the Chiefs of Ontario, and at the Assembly of First Nations, for former National Chief Phil Fontaine. Elder Kelly will say that even though he is not from the Robinson Huron Treaty area, the Anishinaabemowin language he speaks is similar and the laws and ceremonies are the same. Elder Kelly is steeped in Anishinaabe law and is proficient in Anishinaabemowin.

175. Elder Kelly will talk about the principles and philosophy of Anishinaabe law and governance. In particular, Elder Kelly will address how Anishinaabe law applies to Treaty-making. He will explain the significance of ceremonial protocols, such as feasting and gifting, that are required for treaty-making. He will talk about treaties as sacred and how the Robinson Treaties would have involved ceremony, including smoking the Calumet Pipe. He will indicate

that the sacred obligations made during treaty, including the written and oral promises, must be honoured in their spirit and intent.

176. Drawing from his deep knowledge of Anishinaabe law and Anishinaabemowin, Elder Kelly will provide a translation of the Robinson Huron Treaty and explain how Anishinaabe law would have constrained what the Anishinaabek signatories could agree to. Elder Kelly will explain that as a long-standing treaty partner, the British Crown would have been aware of the Anishinaabe laws and protocols for treaty-making.

177. With regard to the written terms of the treaty that provide for the "cede release and surrender" of their land, Elder Kelly will explain that under Anishinaabe law, there is no equivalent for those words if they mean "extinguishment". According to Elder Kelly, you can't extinguish your connection to the land. Anishinaabe people belong to the land. At most, they could agree to share the permanent use and benefit of the land, but they could not extinguish their connection to it because to do so would violate sacred law.

178. Elder Kelly will explain that the Anishinaabek signatories would have understood the Robinson Huron Treaty as setting out the solemn promises, obligations and benefits of the Treaty relationship. With respect to the promise of annuities and the augmentation clause, Elder Kelly will explain that the annuities would have been understood as an extension of the ceremonial feasting and gifting requirements of a treaty relationship. These sacred obligations are binding forever on the parties, and that the implementation of the promise to augment the treaty would not have been understood by the Anishinaabek as permitting the Crown to act unilaterally in deciding whether to increase the annuity.

ELDERS IRENE MAKEDEBIN AND IRENE STEVENS: ANISHINAABE ORAL HISTORY

179. You will hear from Elder Irene Makedebin from Sagamok who is fluent in Anishinaabemowin. Elder Irene Makedebin will tell you about herself, her upbringing and in particular, what she learned from the Elders about the Robinson Huron Treaty.

180. You will also hear from Elder Irene Stevens from Batchawana, who will tell you about the importance of identity and the connection of Anishinaabe identity in relation with the land. She will tell you she was born in Bawaating -- not Sault Ste. Marie. Bawaating is the true Anishinaabe name of the place now referred to as Sault Ste. Marie. Elder Irene Stevens will also tell you about her upbringing and in particular what she knows about the Robinson Huron Treaty.

181. You will hear from both Elders that their oral history was passed on to them from important Elder family members. They will both say that there was an expectation that the annuity would be increased by the Crown for the Anishinaabe. However, both will say, this understanding of the Anishinaabe has not been fulfilled.

CONCLUDING COMMENTS ON THE ANISHINAABE PERSPECTIVE

182. I want to conclude my portion of the Opening Statement with a story about resurgence, because I believe that that is what this case is about. The spirit name or doodem of one of the named representative plaintiffs in this case, Mike Restoule, takes on a special significance. He is Wauzhushk (Muskrat). His ancestor was seen as the smallest and meekest, but in the end, he was the only one who could risk everything to dive down and bring up a clump of Earth so that the land could be made anew on the back of the Giant Turtle for the benefit of all living things.

183. The role of the Muskrat in the Creation story teaches us about a key principle of Anishinaabe law: resurgence. Resurgence is about interdependence on each other and the extraordinary value contained in the selfless acts of the smallest and most underestimated.

Resurgence is about the renewal of Anishinaabe lands, languages, cultures and legal traditions when they have been submerged and drowned by the rising waters of colonialism. While it is impossible to go back to the way things were before the great flood, resurgence reminds the Anishinaabe that they must remain firmly grounded in the foundational philosophies and principles that define them as a people.

184. That completes our Opening Statement.

MIIGWETCH
