

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 (Anishinaabe) Nation who are beneficiaries of the Robinson Huron Treaty of 1850
Plaintiffs

)
)
) *Dianne Corbiere, David C. Nahwegahbow,*
) *Catherine Boies Parker, Chris Albinati,*
) *Daniel McCoy, for the Plaintiffs*

– and –

The Attorney General of Canada, The Attorney General of Ontario and His Majesty the King in Right of Ontario
Defendants

)
) *Glynis Evans, Cameron Fiske, Isabelle Crew, Claudia Tsang and Rhiannon McNamara, for the Attorney General of Canada*

) *W. David Rankin, the Attorney General of Ontario and His Majesty the King in Right of Ontario*

– and –

The Red Rock First Nation and the Whitesand First Nation
Third Parties

)
) *Harley Schachter and Kaitlyn Lewis, for the Red Rock First Nation and the Whitesand First Nation*

– and –

The Teme-Augama Anishnabai
Added Party Plaintiff

)
) *Kate Gunn, for Teme-Augama Anishnabai (Temagami)*
)
)
)
)

) *Spencer Bass*, for the friends of the Court
) Intervenors, Animbiigoo Zaagi'igan
) Anishinaabek; Biigtigong Nishnaabeg;
) Biinjitiwaabik Zaaging Anishinaabek;
) Bingwi Neyaashi Anishinaabek; Long Lake
) No. 58 First Nation; Pays Plat First Nation;
) and Netmizaaggamig Nishnaabeg
)
)
) **HEARD:** February 26, 2024

CHIEF JUSTICE G.B. MORAWETZ

REASONS FOR DECISION

[1] The Plaintiff brings this motion, on consent of the Defendants and the Added Party Plaintiff, and unopposed by the Third Parties, for a Partial Judgment in the form attached to the motion record (the “Partial Judgment”) giving effect to a Settlement Agreement executed on January 18, 2024.

[2] After lengthy negotiations and years of litigation, Canada and Ontario and 21 Lake Huron Anishinaabek First Nations have reached a settlement in relation to past annuities payable under the Robinson Huron Treaty of 1850 (the “Treaty”).

[3] The Treaty was entered into between the Anishinaabe of the north shore of Lake Huron and the British Crown in 1850. The Treaty promised a perpetual annuity. It contained an annuity augmentation clause stating that the Crown would augment the annuity payable should the treaty territory produce such an amount as will enable the Crown to do so without incurring a loss. The Anishnaabe claimed that Canada and Ontario failed to fulfil the Crown promise to augment the annuity over time.

[4] The Restoule case (or “RHT case”) was brought by the representative plaintiffs on behalf of the Robinson Huron Treaty Anishinaabek, including the 21 Lake Huron Anishinaabek First Nations (“RHT First Nations”) who have beneficiaries within their populations and are collectively successors to the signatories of the Treaty. The Statement of Claim was filed on September 9, 2014. The Restoule case was assigned to be case managed by Hennessy J.

[5] Justice Hennessy issued a Representation Order on May 3rd, 2016 authorizing Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch, to bring the proceeding on their own behalf and on behalf of all members of the Ojibewa (Anishinaabe) Nation who are beneficiaries of the Treaty, except those that are members of the Temagami First Nation.

[6] There is a separate civil case involving the Robinson Superior Treaty brought by the Red Rock and Whitesand First Nations, which shares a similar historical background and interpretation of the same augmentation clause.

[7] Through case management, the cases were broken into three stages on consent. The two cases remained separate, but they were heard together in Stages 1 and 2. Stage 1 dealt with treaty interpretation, Stage 2 with Crown defences and Stage 3 with all remaining matters including compensation for past breaches, allocation of Crown liability and implementation of the Augmentation Promise going forward.

[8] Stages 1 and 2 of both cases have been heard before all levels of court, beginning in the Ontario Superior Court of Justice in September 2017, and concluding before the Supreme Court of Canada in November 2023 (decision under reserve).

[9] Stage 3 was scheduled to begin on January 30, 2023. However, on that day, the RHT First Nations plaintiffs and defendants sought an adjournment on consent to allow them to focus on reconciliation and a negotiated resolution of all or part of the claim. The Settlement Agreement reflects this negotiated resolution.

[10] The Settlement Agreement is to take effect regardless of the outcome of the appeal before the Supreme Court of Canada.

[11] The Settlement Agreement provides that Canada and Ontario shall pay to the plaintiffs ten billion dollars (\$10,000,000,000.00), divided evenly between the two Crown defendants.

[12] The terms of the Settlement Agreement stipulate that upon its execution, the plaintiffs will apply for a partial judgment giving effect to the Settlement Agreement and discontinuing that portion of the claim covered by the Settlement Agreement.

[13] This is a historic agreement. I commend all parties for their efforts in concluding these negotiations.

[14] The consent motion is granted. The Settlement Agreement is approved and the Partial Judgment has been signed by me in the agreed upon form.


Chief Justice Geoffrey B. Morawetz

CITATION: Mike Restoule v. The Attorney General of Canada, 2024 ONSC 1127

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Plaintiffs

– and –

The Attorney General of Canada, The Attorney General
of Ontario and His Majesty the King in Right of Ontario

Defendants

– and –

The Red Rock First Nation and the Whitesand First
Nation

Third Parties

– and –

The Teme-Augama Anishnabai

Added Party Plaintiff

REASONS FOR JUDGMENT

Released: February 26, 2024