



Robinson Huron Treaty LITIGATION FUND

Atikameksheng
Anishnawbek

Aundeck Omni
Kaning

Batchewana
First Nation

Dokis First Nation

Henvey Inlet
First Nation

M'Chigeeng
First Nation

Magnetawan
First Nation

Mississauga
First Nation

Nipissing
First Nation

Ojibways of
Garden River

Sagamok
Anishnawbek

Serpent River
First Nation

Shawanaga
First Nation

Sheguiandah
First Nation

Shesheganing
First Nation

Thessalon
First Nation

Wahnapiatae
First Nation

Wasauksing
First Nation

Whitefish River
First Nation

Wiikwemkoong
Unceded Territory

Zhiibaahaasing
First Nation

October 4, 2025

RHTLF Update #3 -Legal Fees Case

The final day of a highly contentious hearing over legal fees in the \$10-billion Robinson Huron Treaty (RHT) Settlement ended Friday, October 3, 2025, with lawyer Brian Gover urging that the court keep sight of the enormous odds that stood in the way of the historic triumph.

After centuries of intergenerational poverty and abysmal mistreatment by the Crown, Mr. Gover said in a powerful submission, the case lifted 40,000 Anishinaabe people to a bright future and a new level of self-respect.

“These people had shared their greatest gift - their land - and the Crown treated them dishonourably,” Mr. Gover told Ontario Superior Court Justice Fred Myers at the end of the day. “This is a remarkable story of access to justice. The value to the clients is incalculable.” These submissions echoed what the Court heard from Elder Nelson Toulouse earlier in the hearing.

Earlier Friday, lawyers for two First Nations who are contesting the legal fees - Atikameksheng Anishnawbek and Garden River First Nation - argued that the \$510-million contingency fee violates an Anishinaabe belief in not “over-harvesting.”

Lawyer Michael Rosenberg said that regardless of the circumstances that prevailed when the contingency fee was negotiated, Anishinaabe communities need the money far more than the legal team does.

The legal team has undertaken to give half their fee - \$255-million - to the RHT First Nation communities. It is intended to augment education, health social services as well as to nurture the Anishinaabe language and culture.

Mr. Gover countered that there would have been no settlement at all had the legal team not risked 17 years - including 65,000 hours - of arduous work to devise legal strategies, assemble massive amounts of evidence and persuade judges all the way to the Supreme Court of Canada that the Anishinaabe had been systematically cheated for 175 years.

He also maintained that it was unfair of Mr. Rosenberg to employ “a hindsight-driven analysis” that portrayed the case as a relatively easy, “low risk” case.

Mr. Gover also criticized Rosenberg for claiming that the fees will cause people to shake their heads in disgust at the legal profession.

In reality, Mr. Gover said, the case will stand forever as a prime instance of how contingency fees permit lawyers to battle for people with scarce resources to find justice. He said the case has laid crucial legal groundwork for future Indigenous challenges as well as providing for the litigants’ children and grandchildren.

“This sharing will continue and will inevitably involve considerations which far exceed \$10 billion,” he said.

Judge Myers is expected to take several weeks or months to render his decision. Before adjourning court, Judge Myers praised counsel and asked to see an Anishinaabe baby who he had heard occasionally burbling during the hearing. The baby represents hope for future generations, Judge Myers said, smiling.

In essence, the case boils down to whether a deal is a deal; or whether a deal can be modified later as circumstances change.

Judge Myers took an active role Friday in raising questions and commenting on previous decisions that may be analogous to the case. He noted often that, while the settlement - and thus, the legal fees - are far higher than anybody envisioned at the outset of the case, the legal work was extensive and exemplary.

“I’ve got real clients here and they are saying this hasn’t shaken (their) faith in the lawyers,” Judge Myers remarked. “I think they’re fabulously represented.”

Mr. Gover submitted that there was a great deal of discussion about the legal fee structure over the years by the Robinson Huron Treaty Litigation Fund (RHTLF) that directed the litigation. He said there was also a broad recognition that the litigation was an uphill battle which had been stalled for years until the legal team took over.

The risk of losing the case and receiving meagre payment for their efforts was a constant threat to the lawyers, Mr. Gover said, but it did not deter the team from scouring through archives and Anishinaabe communities for years to assemble the case. Previous precedents also had to be dispelled with novel legal arguments, he added, and successive judges had to be persuaded to treat Anishinaabe law on a level with established Canadian law.

“This was a very risky case,” Mr. Gover said. “This was a case that could have been lost forever because of the nature of the treaty involved.”

Lawyers for the 19 First Nations and Anishinaabe Elders who testified earlier in the hearing held firmly to their conviction that Anishinaabe law and sense of honour means the fee agreement, which the lawyers argued was fair at the time it was entered into, remains binding on the communities.

But on Friday, Mr. Rosenberg attempted to diminish the role of Anishinaabe law and customs in the fee dispute. He told Judge Myers that a pipe ceremony which took place between the Elders and Trustees of the Litigation Management Committee and the lawyers in 2008 did not bind the LMC to a contingency fee arrangement which wasn't negotiated until three years later.

"If they feel they want to be bound by Anishinaabe law and to be bound that way, is that necessarily bad?" Judge Myers interjected.

Mr. Rosenberg replied that Anishinaabe law was neither applicable, nor had it been properly interpreted. He also accused the legal team of having been in a conflict of interest - advising the RHTLF about the fees it was hoping to obtain.

Judge Myers questioned Mr. Rosenberg about the notion that the applicants had denigrated Indigenous people generally by claiming they needed independent legal advice to negotiate a complicated fee arrangement.

"Like almost every Canadian, they don't know how to negotiate retainer agreements," Mr. Rosenberg replied. "There is nothing insulting or embarrassing about that."

However, the lawyers for RHTLF and the legal team both argued that in this case the evidence is clear that the individuals negotiating the retainer agreement drove a hard bargain and negotiated an agreement that was routinely described as fair for all parties. What's also important to keep in mind is, would any lawyer(s) give half of their fees back to the people they're representing? Justice Myers reiterated that this case is one in which the lawyers faced a high degree of risk.

RHTLF Communications