

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM JUSTICE
PATRICIA C. HENNESSY

)
)
)
)

FRIDAY THE 26th DAY
OF JUNE 2020

B E T W E E N:

THE CHIEF AND COUNSEL OF THE RED ROCK FIRST NATION
ON BEHALF OF THE RED ROCK FIRST NATION BAND OF INDIANS,
THE CHIEF AND COUNSEL OF THE WHITESAND FIRST NATION
ON BEHALF OF THE WHITESAND FIRST NATION BAND OF INDIANS

Plaintiffs

– and –

THE ATTORNEY GENERAL OF CANADA
and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and the ATTORNEY GENERAL OF ONTARIO
as representing Her Majesty the Queen in Right of Ontario

Defendants

PARTIAL JUDGMENT

THIS MOTION, made by the plaintiffs for partial summary judgment seeking the following declarations:

- a) Ontario's limitations legislation does not apply to the plaintiffs' claims as a matter of statutory interpretation and apart from any issues of discoverability, knowledge and capacity, constitutional validity, constitutional applicability, estoppel, concealment, and equitable fraud;
- b) Her Majesty the Queen In Right of Ontario and the Attorney General Of Ontario as representing Her Majesty the Queen in Right of Ontario (hereinafter "Ontario") enjoy no Crown immunity in respect of any entitlements due, including those calculated in respect of the period prior to the coming into force of the Proceedings Against the Crown Act on September 1,

1963;

- c) Ontario's limitations defence, if any, cannot apply to the benefit of Canada;
- d) both Crowns are jointly and severally liable "to pay the plaintiffs the full amount of any compensation payable in respect of the [Robinson Treaties'] annuity augmentation promise"; and
- e) in any event, Canada is a "paymaster" and "obligated to pay the plaintiffs the full amount of any compensation payable in respect of any failure to augment the annuities irrespective of which level of government is ultimately liable for the compensation to be paid."

and a matching motion brought by the plaintiffs in Sudbury Court Files No: C-3512-14, C-3512-14A was heard on October 15 – 18 and 21 – 24, 2019 at Sudbury, Ontario.

ON READING the Notice of Motion of the plaintiffs, the Brief of Statutes and Legislative History of the Red Rock and Whitesand First Nations, the Brief of Statutes and Legislative History of Ontario, the Supplementary Brief of Statutes and Legislative History of Ontario, the findings made by this Court in Stage One as contained in the judgment and reasons for judgment of the Court released on December 21, 2018 (2018 ONSC 7701), the text of the Treaty, photographs of the Treaty documents, and the factums and books of authorities filed, and on hearing the submissions of the lawyers for each of the parties,

1. THIS COURT ADJUDGES AND DECLARES THAT the plaintiffs' claims are not barred by Ontario's limitations legislation, as a matter of statutory interpretation, without considering the issues of discoverability, knowledge and capacity, constitutional validity, constitutional applicability, estoppel, concealment, and equitable fraud.

2. THIS COURT ADJUDGES AND DECLARES THAT Ontario does not benefit from the doctrine of Crown immunity in relation to these actions.

3. **THIS COURT ORDERS THAT** the motion for partial summary judgment on the questions of whether both Crowns are jointly and severally liable or in the alternative whether Canada is the paymaster is dismissed and the questions shall be considered as part of the Stage Three trial.

4. **THIS COURT ORDERS THAT** costs shall be determined by the Court after receiving written submissions.



P.C. HENNESSY, J.

RED ROCK, et al
Plaintiffs

- v. -

CANADA, et al
Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Commenced at
Thunder Bay

PARTIAL JUDGMENT

MINISTRY OF THE ATTORNEY GENERAL

Crown Law Office – Civil
McMurtry-Scott Building
8th Floor, 720 Bay Street
Toronto, ON M7A 2S9
Fax: (416) 326-4181

Lisa La Horey, LSO # 31148M

Tel: (416) 573-4803

Email: lisa.lahorey@ontario.ca

Brent Kettles, LSO # 61568E

Tel: (416) 314-2040

Email: brent.kettles@ontario.ca

**Counsel for the Appellants (Defendants) Her
Majesty the Queen in right of Ontario and the
Attorney General of Ontario**