

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:

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

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 Thunder Bay Court File No. 2001-0763 (on behalf of the Red Rock and Whitesand First Nations, third parties herein, in relation to the Robinson Superior Treaty), 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.

RESTOULE, et al
Plaintiffs

- v. -

CANADA, et al
Defendants

- v. -

RED ROCK, et al
Third Parties

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Commenced at
Sudbury

PARTIAL JUDGMENT

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