



Robinson Superior Treaty Annuities Case Ontario Superior Court of Justice Review Hearing

BACKGROUND

In the 2024 Restoule decision, the Supreme Court of Canada held that Canada and Ontario (together, the Crown) breached the Robinson Treaties by failing to fulfil the Crown's promise to increase annuity payments to the Anishinaabe treaty beneficiaries.

As part of its decision, the Supreme Court directed the Crown to engage with the Robinson Superior Treaty (RST) First Nations for six months to try to come to an agreement about past compensation for the Crown's breach of treaty. If the parties were not able to agree on a settlement, the Crown was to make an offer to the RST First Nations at the end of the six months. If the RST First Nations rejected the offer, the Supreme Court said they could ask a court to review the offer and determine whether the offer, and the engagement process that led to it, was fair and honourable.

WHAT IS THE REVIEW HEARING ABOUT?

In January 2025, the Crown offered the RST First Nations of \$3.6 billion for past compensation (\$1.8 billion from Canada and \$1.8 billion from Ontario). The RST First Nations rejected the offer and asked Justice Hennessy at the Ontario Superior Court of Justice to review it.

If the Court finds the Crown's engagement process was dishonourable or that the compensation amount is inadequate, the Court can send the matter back to the Crown for further consideration, or order the Crown to pay a different amount of compensation.

The review process is only about the Crown's compensation offer to the RST First Nations. However, the Court's decision could affect TAA/TFN's own negotiations with the Crown for past compensation.

Both TAA/TFN and the RHT First Nations are intervening in the review hearing to protect their own interests.

WHAT WILL THE PARTIES ARGUE AT THE REVIEW HEARING?

The parties have submitted written arguments in advance of the review hearing. The parties will also make oral arguments at the review hearing.

A SUMMARY OF EACH PARTIES' WRITTEN ARGUMENTS IS BELOW.

RST FIRST NATIONS

- Neither the Crown's offer nor the engagement process that led to it were honourable.
- In determining its offer, the Crown failed to properly account for the losses suffered by the RST First Nations and failed to properly account for the needs of the RST First Nations.
- The Crown reverse-engineered a rationale to support a pre-determined amount of past compensation that is the same as the RHT settlement on a per person basis.

CANADA

- The Court should treat the Crown's decision with deference because the Crown has to balance multiple different considerations in reaching its decision, including the needs of other Indigenous and non-Indigenous populations.
- The engagement process between the Crown and RST First Nations was honourable.
- Canada's determination of compensation for the RST First Nations was made independently of the RHT settlement. However, the RHT settlement is a relevant benchmark for assessing whether RST compensation is honourable.
- If the Court finds the Crown acted dishonourably, it should send the matter back to be determined again. The Court should not substitute its own amount of compensation.

ONTARIO

- The Crown acted honourably and determined a fair amount of compensation for the RST First Nations.
- Ontario appropriately considered the RHT settlement as a benchmark, not a ceiling for compensation.
- If the Court finds the Crown acted dishonourably, it should send the matter back to be determined again. The Court should not substitute its own amount of compensation.

TAA/TFN

- If the Court finds the Crown acted dishonourably or that compensation is inadequate, it should make an order that the Crown pay a different amount. It should not send the matter back to the Crown or order more engagement.
- The Court is responsible for ensuring the First Nations have access to a fair remedy, and for ensuring the Crown is held account for its treaty breach.
- Compensation needs to be paid as soon as possible. The First Nations should not have to wait any longer.

RHT FIRST NATIONS

- In implementing the Treaty, the Crown must act in accordance with the Anishinaabe Treaty principles of respect, responsibility, reciprocity, and renewal.
- The RHT settlement should not be relied on by the Crown. The negotiations are subject to privilege and the Court cannot infer why the RHT First Nations chose to settle for the amount that they did.
- The Court should set aside the Crown's offer and determine the amount that should be paid for past compensation.