

**TERMS OF REFERENCE  
FOR THE ROBINSON HURON TREATY MIZHINAWE**

**WHEREAS**, the OJIBEWA INDIANS, inhabiting and claiming the Eastern and Northern Shores of Lake Huron and Lake Superior (hereinafter the “ROBINSON HURON TREATY ANISHINABEK”), on September 9, 1850, at Bawating (Sault Ste. Marie), in the Province of Canada, entered into a nation-to-nation agreement, known as the Robinson Huron Treaty, with the Honorable WILLIAM BENJAMIN ROBINSON, on behalf of HER MAJESTY THE QUEEN (hereinafter the “CROWN”);

**WHEREAS** the Robinson Huron Treaty provided, among other things, for the payment of a perpetual annuity, in the global amount of 600 pounds, which was to be augmented from time to time if the amount produced from the Treaty territory enabled the Crown to do so without incurring a loss;

**WHEREAS** the annuity is a collective lump sum annuity out of which is to be paid a distributive amount to individuals;

**WHEREAS** the Crown failed to augment the annuity, except for once in 1875 when it raised the amount payable to individuals to one pound (\$4.00), even though the value of the wealth generated from the territory enabled the Crown to augment the annuity beyond \$4.00;

**WHEREAS** the ROBINSON HURON TREATY ANISHINABEK commenced a legal action on September 9, 2014, in Ontario Superior Court (*Restoule v Canada and Ontario*, Court File No. C-3512-14) against the Crown respecting the Annuity Claim for the violation of the Treaty Augmentation promise, claiming among other things, past compensation as well as implementation of the augmentation promise going-forward;

**WHEREAS** the ROBINSON HURON TREATY ANISHINABEK, established a Trust, known as the Robinson Huron Treaty Litigation Fund (RHTLF) to pursue and manage the litigation and/or negotiation of the Annuity claim;

**WHEREAS** the Ontario Superior Court ruled in favour of the ROBINSON HURON TREATY ANISHINABEK, in Stage One of the Trial, in a Decision rendered by Justice Hennessy on December 21, 2018, which recognized the nation-to-nation nature of the Treaty and that it was entered into under both Anishinaabe law and common law;

**WHEREAS** the Stage One Decision held, among other things that:

- the Crown has a mandatory and reviewable obligation to increase the Treaties’ annuities when the economic circumstances warrant. The economic circumstances will trigger an increase to the annuities if the net Crown resource-based revenues permit the Crown to increase the annuities without incurring a loss; and

- the Treaty Augmentation promise as an existing treaty right under s. 35 of the *Constitution Act, 1982*.

**WHEREAS**, in her Stage 1 Decision, Justice Hennessy characterized the annuity as a collective entitlement rather than an individual entitlement, and ruled that the proviso in the augmentation promise that limits the increase to one pound (\$4.00), applies only to limit the individual distributive shares payable to individual beneficiaries, but does not apply to limit the augmentation of the collective annuity;

**WHEREAS** the Decision of Justice Hennessy was upheld by the Ontario Court of Appeal, in a Decision released on November 5, 2021;

**WHEREAS**, the RHTLF has been in negotiations with Crown in right of Ontario (Ontario) and the Crown in Right of Canada (Canada) and settlement of a portion of the Annuity Claim relating to past compensation is reasonably expected to occur within the next 6-8 months;

**WHEREAS** in anticipation of the settlement of past compensation, the Litigation Management Committee (LMC) of the Trustees, has recommended that steps be taken regarding the use and distribution of the compensation;

**THEREFORE THE ROBINSON HURON TREATY ANISHINAABEK**, through the RHTLF, hereby establishes the office/position of Robinson Huron Treaty Mizhinawe, for the purposes and terms of reference set out below:

## **PURPOSE**

The Robinson Huron Treaty Anishinaabek, through the RHTLF, hereby establishes the office of Mizhinawe and appoints the Hon. Harry LaForme to lead that office. The Mizhinawe will examine issues and engage in consultations with the members and communities of the Robinson Huron Treaty Anishinaabek and provide advice on the use and distribution of Compensation to be paid by the Crown to settle the *Restoule* Litigation, subject to the terms of the Compensation Disbursement Agreement.

## **TERMS OF REFERENCE**

The Mizhinawe shall work at the direction of, but independently of the LMC, toward the above-noted purpose, based on the following terms of reference:

- The Mizhinawe shall collaborate with the LMC to develop a plan and budget, and to assemble a team to support this work, including legal and administrative support, as well as Elders, experts and advisors to ensure access to the fullest information, and in particular that Anishinaabe laws and protocols are respected and adhered to.

- The Mizhinawe in collaboration with the LMC shall engage in information sessions about the *Restoule* case and the settlement for past compensation with the Robinson Huron Treaty Anishinaabek, including RHT First Nation Chiefs and Councils, communities, membership, beneficiaries, Elders, Women and Youth as he deems appropriate. The information sessions will ensure that RHT beneficiaries are aware of the Trust Indenture, the Compensation Disbursement Agreement and the settlement approval process, and given an opportunity to express their views about the terms of the proposed settlement.
- The Mizhinawe, in collaboration with the LMC, will engage with the negotiators for Canada and Ontario, in at least one session, to hear their views on the information to be provided in the consultations; and the Mizhinawe and LMC shall discuss with the negotiators for Ontario and Canada, their potential participation in information sessions.
- The Mizhinawe shall take into account the economic elements and principles embodied in the Treaty, which may include utilizing existing or new research and analysis to establish the economic context and elements of the Treaty and activity and policies of the Crown impacting upon these matters.
- The Mizhinawe, in collaboration with the LMC, shall engage in information sessions regarding the use of the 10% of compensation set aside in the Compensation Disbursement Agreement for collective purposes with RHT First Nation Chiefs and Councils, communities, membership, beneficiaries, Elders, Women and Youth as deemed appropriate.

The Mizhinawe shall specifically investigate and provide advice and recommendations regarding:

1. Finding a balance between collective community needs and individual needs in developing options for distributions, including per capita distributions;
2. Research and make recommendations on membership and beneficiaries, ensuring that decisions promote harmony in communities;
3. Recommend a process for addressing the 1% of compensation set aside for beneficiaries that are not members of the 21 First Nations;
4. Guide the work on disbursements to the 21 First Nation in accordance with the Compensation Disbursement Agreement with the assistance of accounting / audit expertise;
5. Conduct / support the LMC conducting Information Sessions on the above;
6. Prepare a report on the findings from the information sessions on the use of the 10% of compensation set aside in the Compensation Disbursement Agreement for collective purposes; and
7. Highlight concerns and prepare recommendations on an alternative dispute resolution process related to the Compensation Disbursement Agreement that could be brought forward from annuitants.

## **PARAMETERS, DURATION AND REPORTING**

In pursuing this mandate, the Mizhinawe should be mindful of the following:

- The terms of the Trust Indenture and the Compensation Disbursement Agreement;
- That Robinson Huron Treaty rights are collective rights that belong to the ROBINSON HURON TREATY ANISHINABEK and its constituent First Nations, as successors to the signatories of the Robinson Huron Treaty;
- Addressing and determining the issue of the allocation and potential distribution of per capita payments from the overall compensation amount requires complex economic, social and legal considerations; and
- The Chiefs and Trustees desire to establish uniformity, consistency and unity among all of the RHT First Nations communities on these matters.

The Mizhinawe shall aim to complete the above work within 6-8 months from starting and shall report to the LMC, Trustees and the RHT Chiefs upon completion of the work. The Mizhinawe may, as appropriate, issue an interim or interim reports and his mandate may be extended upon agreement with the LMC.