



**Robinson Huron Treaty**  
**LITIGATION FUND**



# Community Information Session and Update

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Report on the Robinson Huron Treaty Settlement

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## Aundeck Omni Kaning First Nation

**DATE:**  
January 10, 2024

**IN ATTENDANCE:**  
123 total (52 in person, 71 on Zoom)

**OPENING:**  
Elder Georgina Nahwegahbow



# INTRODUCTION

This is a summary report of the Community Information Session and Update on the Robinson Huron Treaty (RHT) Settlement Agreement held at Aundeck Omni Kaning (AOK) First Nation on January 10, 2024. The meeting was available to the Membership either in person or virtually via Zoom. There were 123 Members in attendance, 52 in person and 71 via Zoom.

The agenda for the meeting is set out below:

1. Opening Prayer from Elder Georgina Nahwegahbow
2. Welcoming Remarks from Chief Patsy Corbiere and Valerie Richer (Facilitator)
3. Brief History of the Case, Update on the Status of the Settlement Agreement and SCC update by Stacy Tijerina (Legal Counsel)
4. Overview of the Summery Engagement Report: What you said by Valerie Richer
5. Financial Sharing of Information and Trust Mechanisms by Ryan McLeod (Financial Advisor)
6. Questions and Answers (Q & A)

Information about the litigation and the status of settlement negotiations is posted on the Robinson Huron Treaty Litigation Fund (RHTLF) website. The summary report "What We Heard" from the summer session will be available on the member's only portal of the AOK website once it is up and running.

Following the information session, members were given an opportunity to ask questions.

***This report is a summary of the in-person and on-line discussions during the information and Q & A sessions.***

## THE PLENARY SESSION

Following the opening by Elder Georgina Nahwegahbow, Chief Corbiere advised that Settlement Agreement had been signed by all of the First Nations, and it was tentatively scheduled to go before a Judge on January 30, 2024, for approval. That would start the 60-day clock for the release of settlement funds to the RHT Litigation Fund. She also indicated that the settlement from the Manitoulin Project had been signed and that those settlement funds would be distributed around the same time as the RHT settlement.

She reminded the members that there are problems with the membership lists and asked that people call their families and ask them to make sure that the Membership Office has their up-to-date contact information.

The meeting facilitator, Valerie Richer thanked the membership and spoke of how honoured she was to be in community. She spoke of her respect for Chief Corbiere and the very significant work that Chief has been a part of since 2012 to achieve the Settlement Agreement. A great deal of effort has gone into advocating on behalf of the 21 RHT First Nations throughout the litigation and settlement process. As a representative plaintiff, Chief Corbiere together with Mike Restoule, Roger Daybutch, Duke Peltier, Peter Recollet, and Dean Sayers had their names appear on every court document throughout the process.

## BRIEF HISTORY OF THE CASE, UPDATE ON THE STATUS OF THE SETTLEMENT AGREEMENT AND SUPREME COURT OF CANADA UPDATE

Stacy Tijerina introduced himself as a lawyer from Batchewana First Nation and beneficiary under the Settlement Agreement and advised that he had been asked to present legal information about the past compensation for the annuities. He reminded the membership that the information was both solicitor/client and settlement privileged and was for Band members only and not for the general public.

He confirmed that the effective date for the Settlement Agreement is 9 September 2023. The Settlement Agreement was signed on behalf of the First Nations on January 3, 2024. It has been sent to representatives for Ontario and Canada for signing in accordance with the signing sequence set out in the Settlement Agreement.

He briefly reviewed the treaty, the trial history, the decisions and appeals, including the appeal to the Supreme Court of Canada (SCC) heard on November 9 and 10, 2023. He confirmed that the SCC decision would not affect the Settlement Agreement for past compensation, but that it did have the potential to affect the go-forward negotiations regarding the application of the treaty augmentation promise into the future, which is important to the First Nations.

He also reviewed the history and purpose of the Robinson Huron Treaty Litigation Fund, the Settlement Agreement, the litigation timeline and the next steps in the process.

Stacy advised that the Settlement Agreement will be before Justice Morawetz of the Ontario Superior Court of Justice for an order dismissing the past compensation portion of the claim on 30 January 2024. Sixty days after the date of the order, the settlement funds will transfer to RHTLF and be distributed according to the Compensation Disbursement Agreement.

He confirmed that the issue of the go forward amount of compensation, Stage 3 of the trial process still needs to be addressed. The Robinson Huron Treaty Stage 3 is stayed for negotiations but the Robinson Superior First Nations proceeded with their Stage 3 in 2023. The Supreme Court issued an order to Justice Hennessey of the Superior Court of Justice that she was not to release her Stage 3 decision for the Robinson Superior First Nations on this until after the SCC had delivered their decision on the appeal heard in November 2023.

The full presentation of the history of the case, update on the status of the settlement agreement and SCC update will be available for review through the members' only portal on the AOK website once it is up and running.

## REVIEW OF ENGAGEMENT REPORT “WHAT YOU SAID...” FROM JUNE 27, 2023

Valerie Richer presented a review of the Summary Engagement Report from the meeting held in AOK on June 27, 2023. This included a review of the top 10 most common responses to the breakout questions for the 21 RHT First Nations and a review of the specific comments from the membership at the June 27 session.

The full presentation and the Summary Engagement Report will be available through the members' only portal on the AOK website once it is up and running.

## FINANCIAL SHARING OF INFORMATION AND TRUST MECHANISMS

Ryan McLeod, Financial Advisor to the RHTLF, advised that communities are evaluating what is the right balance between paying a per capita distribution to members and maintaining a collective amount for the future generations.

Ryan McLeod provided an estimate of the AOK share of the settlement funds based on the formula set out in the Compensation Disbursement Agreement. Due to the confidential nature of this information, it is not included in this summary report. The projected timeline for the payout is:

- **Priority One:** Repay costs of Litigation – April/May 2024
- **Priority Two:** 39% equal share of the Settlement funds – April/May 2024
- **Priority Three:** Up to two years for payout
  - There is still considerable work to reconcile who is an annuitant and to determine the actual population as the membership lists kept by ISC are out of date and continuously changing.
  - AOK is currently recorded as having a population of 932,
    - 489 are listed members only and,
    - 443 are listed as annuitants.

- Once these numbers are confirmed, the AOK portion of the Settlement funds will be determined based on the Compensation Disbursement Agreement which states the following:
  - 25% population
  - 25% annuitants

As a caution, it is important to remember that the Compensation Disbursement Agreement is a formula that Chiefs agreed to in 2012 to get funds to the First Nation. Once funds are received by the First Nation, it will be up to Chief and Council to decide how to disperse funds and what those amounts will be.

Ryan McLeod advised that many of the communities are considering implementing a trust to help with the collective amount. A trust is a tool to protect the portion of the settlement funds that are held for the collective that will allow income to be generated for the community and member initiatives. Each Nation will have to determine:

- A value for the preservation clause (amount set aside for future generations)
- What initiatives the annual payouts will support, some examples are as follows:
  - Annual member distributions
  - The per capita distribution for the minors (under 18 or whatever age AOK decides)
  - Establishing a fund for newborn members
  - Supports for items like health, education, housing, youth, economic development, or language

Ryan McLeod provided the example that if a trust were created for AOK with a preservation clause where a set amount would be continuously maintained and provided \$50 million for a per capita distribution.

- \$50 million equally divided by the Membership would be +\$50,000/member

He stressed that the amounts are estimates for discussion purposes only and are subject to change given that at this time there are still a series of factors to be assessed, which include population, annuitants, and finalizing costs.

AOK will have to work together to identify what and how they want their trust to work and who the trustees will be.



## THE Q & A SESSION

Following the presentations, members online and in person were invited to ask questions. There were some general questions and several that were primarily focused on issues of entitlement, who is an annuitant, who is a member, the shares for minors, costs and community engagement.

### **General**

There was a question whether or not the Chiefs named in the litigation would be entitled to any extra compensation for that role. Members were advised that those Chiefs would not receive anything extra and would be compensated as Band members receiving the same as everyone else. It was pointed out that the claim was not about individual rights. As a representative action, representatives had to be designated as it was impossible to name all 39,000 Treaty members.

Chief Corbiere advised the members that the First Nations are the ones taking risks related to the settlement and stated that if there are disputes or people who want to challenge the settlement, it will be the First Nations who have to cover the costs for that.

One member expressed concern there was still talk about the \$4 annuity. She indicated her belief that all resources in the Territory were the assets of the First Nation members. She wondered why after all the years of talking about self governance that ISC is still in control. Her concerns were acknowledged, and it was confirmed that for the time being the annuity is still only \$4. It was noted that the Crown does not do anything unless they are pushed and once the past compensation on the annuity has been addressed, the go forward claim regarding the \$4 amount will begin.

### **Membership**

Members were advised that, according to the most recent ISC data, the membership for AOK is 932 members, 443 are listed as annuitants and 489 are not. It was suggested that the actual membership is really about 700 members at AOK. One member wanted to know what effect, the new membership and transfer requests would have on the membership number and whether or not the members would have a say in who is being added.

Chief Corbiere indicated that the population is growing every year and, in many cases, when a member passes away, the death certificate is not sent to ISC, so many of those people are still on



the list. She reminded people that the membership list for AOK is still under the ISC system and AOK has no say who goes on the list. She confirmed that Council has suspended the transfer requests for now, but there will have to be decision if that decision will be changed.

She confirmed that AOK is working on a Governance Code and that membership will be one of the pillars of that code and it may include a “one parent rule” for membership but advised that it will not be done within the next couple of years.

### **Entitlement**

Members had questions about the impact of delays at ISC in the registration process on entitlement based on the effective date, what will happen to an Elder’s share if they pass away before distribution, requests for transfers and new requests for membership.

It was noted that there is a considerable backlog at ISC in relation to processing membership applications and that appeals can take up to five years to be decided.

Ryan McLeod indicated that a legal opinion is being drafted for the First Nations to help define who will be entitled. He also indicated that there are a number of membership applications

that were in the queue at ISC well before September 9, 2023. There is work ongoing to identify people who are in limbo. Each First Nation will have to decide who they want to include. The goal is to ensure that no one gets left behind.

Ryan McLeod confirmed that anyone who was living as of September 9, 2023, would be entitled to a share, even if they pass away before the money is distributed. Members are encouraged to ensure that they have a will so that their estate can receive the money.

Chief Corbiere noted that since the Settlement Agreement was announced there has been a “mad dash” to get registered. She indicated that the onus is on parents to register children as soon as they are born and that reminders have been sent out to the members encouraging them to register their children. The AOK administration has no control over whether or not that happens and are not responsible if there are issues getting children registered. She indicated that in the past Chief and Council have approved medical supports for members caught up in the registration process, but that was in response to an urgent situation. The Band will need to decide the cut off date for new registrations. She confirmed that transfer requests have already been suspended and that a decision would need to be made about what to do with transfer requests going forward.

## **Minors' Shares**

Members had questions about what would happen to money for children under the age of 18.

Ryan McLeod confirmed that Chief and Council have a fiduciary obligation to ensure that payouts for children are held in trust and that the money will grow. The money, with interest, will be paid to those minors once they have reached the age of maturity. It will be up to the Band to decide what that age will be.

He also confirmed that where a child becomes of age between September 9, 2023 and the date of the per capita distribution, they will be entitled to their share.

## **Annuitants**

There were some questions about annuitants, specifically how a member could determine if they were an annuitant, and if the annuitants and non-annuitants would be treated the same.

Ryan McLeod advised that a member could determine if they were an annuitant by applying to ISC for a treaty payment, they would either receive a cheque, or they would receive a refusal letter that would be based on the current annuitant list maintained by ISC.

Chief Corbiere cautioned that ISC should not be paying anything because the lists are wrong. She provided the case where children are listed as annuitants but the parents are not as an example of the issues with the ISC list. She indicated that all members should be beneficiaries under the Robinson Huron Treaty but that ISC is now sending out letters stating that no Manitoulin Bands are RHT annuitants because they signed the Manitoulin Treaty which is not correct.

Chief Corbiere confirmed that for the past compensation portion of the claim, all members on the ISC membership list will be treated the same regardless of their "annuitant status" and they will all receive an equal amount for the past compensation. She cautioned that the go-forward payments might be different, and court cases take a long time and First Nations are starting to have some successes now, but they cost a lot of money.

## **Costs**

There were questions about the amount of legal costs and the amounts being reimbursed to the 21 First Nations. In his presentation, Ryan McLeod had shown the costs that were being reimbursed to AOK only. Ryan McLeod explained that under the Compensation Disbursement Agreement each First Nation will

receive the amount they contributed to the Litigation Fund. Some contributed cash only, others relied on loans and lines of credit. The total contributions from all 21 First Nations was \$25 million.

Stacy Tijerina indicated that he was unable to answer the question about the legal fees, as the retainer is with Nahwegahbow Corbiere.

## **Community Engagement**

Members had questions about community input in the decision making around the formation of a trust and the distribution of settlement funds to minors. Some members expressed concerns that there had been no meetings to address this and that no meetings were scheduled.

Chief Corbiere indicated that meetings could not be arranged as the Settlement Agreement was up in the air as not all the First Nations wanted to provide the BCRs approving it. There was \$25 million in costs that the First Nations might have been on the hook for if all approving BCRs were not submitted. She confirmed that this was the reason AOK could not move ahead with consultation because it was not certain the money was coming.

The Settlement Agreement was finally approved by all 21 First Nations and signed on January 3. Now that the Agreement is settled and signed, the process can move forward. She reminded the members that there is a lot of work involved with moving forward.

She also reminded the membership that the distribution has to be equal and off reserve members need to be considered too. She confirmed the need to form a trust and designate Trustees will be important.

She acknowledged that it is important to get people to come to meetings and that AOK has tried to do engagement in the past but hardly anyone showed up. She indicated that this settlement is not just about distribution, it's about moving forward and what you want for the community.

Chief Corbiere noted that there is money coming in where a large amount has to be invested for education but no one is going to schools and identified the need to encourage further learning.

She stated that members are going to receive a considerable amount in settlement funds in the near future and confirmed that they should help to decide what will happen.

With no further questions, the meeting concluded at 7:45 p.m.



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***Prepared by the***  
**Robinson Huron Treaty Litigation Fund**

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**Aundeck Omni Kaning First Nation**

13 Hill Street, R.R. #1  
Little Current, Ontario POP 1K0  
Phone: 705-368-2228  
[www.aokfn.com](http://www.aokfn.com)

