

# ROBINSON-SUPERIOR ANNUITIES CASE



BIIGTIGONG  
NISHNAABEG

## FAQ for Biigtigong Nishnaabeg

### WHAT IS THE ANNUITIES CASE ABOUT?

The Robinson Superior Treaty (RST) and Robinson Huron Treaty (RHT) were both made in 1850 between the Crown and Anishinaabeg Chiefs from the areas north of Lake Superior and Lake Huron. They are essentially identical in wording. Under each treaty the Crown promised to provide yearly payments (the annuity) in exchange for the Anishinaabeg allowing Euro-Canadians into their territories. According to both treaties, the Crown was obligated to increase the annuity as they obtained revenues from the resources in the treaty territories. This was done only once in 1875, when payments were increased to \$4 per person. They have remained at that level.

### ROBINSON-SUPERIOR ANNUITIES CASE

The Robinson Superior and Robinson Huron annuities cases were heard together in 2 stages. Stage 1 determined that the Crown was obligated to increase annuity payments. Stage 2 determined that the Crown governments have no defense. Stage 3 started for the Lake Superior First Nations in January, 2023, while the Lake Huron First Nations went into confidential settlement talks with Ontario and Canada. Stage 3 will decide which Crown government pays (Ontario, Canada or both) and how much they owe to the First Nations as a result of the Crown's breach of the treaty by not raising annuities for over 150 years.

The 12 Lake Superior First Nations proceeded with Stage 3 of their trial on January 30, 2023. So far, it has proceeded positively for the First Nations' side. Final submissions in court will be made in September of 2023, but it is expected that a decision by Justice Hennessy will not be received until 2024. When it is received, there is a high likelihood of appeals, which could take years to finally resolve. The judge's previous Stages 1 and 2 decisions were also appealed to the Ontario Court of Appeal, which mainly upheld them. But Ontario then appealed further to the Supreme Court of Canada. The Supreme Court of Canada appeals will be heard in November of this year.

### WHAT IS THE ROBINSON-HURON SETTLEMENT AND HOW DOES IT IMPACT BIIGTIGONG NISHNAABEG?

There are 21 Lake Huron First Nations involved in the RHT annuities case. They went into settlement discussions in January and did not proceed with Stage 3 of their trial. A proposed settlement agreement was announced on June 17, 2023 for past annuities in the amount of \$10 Billion. They have now initiated a process of community engagement to finalize the settlement. This settlement is separate from the RST case, but because there are many similarities between the two cases it is a positive signal. Any decision or settlement of the RST case will be based on the circumstances of the RST.



## WHAT ABOUT SETTLEMENT NEGOTIATIONS FOR THE ROBINSON -SUPERIOR AREA?

The Lake Superior First Nations could engage in further settlement negotiations with the Crown prior to a final decision from the Court. This means that the First Nations and the Crowns could agree on a compensation amount outside of court, as the RHT First Nations did. Biigtigong Nishnaabeg would support a settlement that is fair and just.



## WHAT ARE THE ANNUITIES?

An annuity is a collective entitlement of the First Nations under the RST. It was originally set at “five hundred pounds” of “good and lawful money of Upper Canada” (approximately \$2,000). However, there is an individual component to the collective annuity. In Stage 1 of the annuities trial, Justice Hennessy found that the reference to a cap equaling \$4 per person in the treaty, “is a limit only on the amount that may be distributed to individuals, and this distributive amount is a portion of the collective lump sum annuity payable to the Chiefs and their Tribes.” The court found that the individual distributive amount may be increased, but that the collective annuity must be increased by the Crown, when the economic circumstances warrant. These findings were upheld by the Ontario Court of Appeal.

## HOW DO WE COLLECT ANNUITIES IF WE DIDN'T SIGN THE TREATY?

Biigtigong Nishnaabeg was not present or represented when the RST was made in 1850. Biigtigong Nishnaabeg never surrendered any part of our territory. We are in the process of negotiating an Aboriginal title claim with five other First Nations against Ontario and Canada. This process is moving toward a negotiated settlement that may include adhering to the RST, and thus becoming entitled to both past and future annuity payments. Our interest in the annuities case depends on whether we adhere to the RST or are found to be parties to the RST in the title claim.

## HOW DOES THIS RELATE TO COMPENSATION FROM BN'S ABORIGINAL TITLE CLAIM?

Any compensation that Biigtigong Nishnaabeg will receive from the resolution of its title claim will be separate from compensation in the annuities case. Community input will be important on the management and allocation of compensation from either case.





## HOW WILL ANNUITIES COMPENSATION BE DISTRIBUTED?

There has been no determination of how any compensation for past annuities, whether as a result of a court decision or a negotiated settlement, will be used by the First Nations. It will be up to the Chiefs and Councils, as elected leaders, to decide how this compensation is to be managed and allocated, including questions about disbursement to individual members. Because this compensation will involve a large one time only amount, it is important to have community input into what principles should be applied.

## WHAT HAPPENS IF THE ANNUITIES CASE IS SETTLED BEFORE OUR ABORIGINAL TITLE CLAIM IS SETTLED?

If the RST annuities case is completed before our Aboriginal title claim, Biigtigong Nishnaabeg's annuity monies will have to be set aside until we become a treaty signatory.

## WHAT ABOUT FUTURE ANNUITIES?

Note that the current litigation and negotiations are focused annuities that should have been paid in the past. Another question is how annuities will be determined and paid in the future. This issue must still be worked out between the parties. There will be further discussions between the Lake Superior First Nations and Ontario and Canada, as annuities are a perpetual obligation of the Crown.

## WHERE IS THE BOUNDARY BETWEEN THE ROBINSON-SUPERIOR AND ROBINSON-HURON TREATIES AND WHY DOES THAT MATTER?

In June 2022, a meeting was hosted by Netmizaggamig Nishnaabeg that included several Lake Superior and Lake Huron Chiefs in order to discuss and determine the boundary between the Lake Huron treaty and Lake Superior treaty. This was necessary because the texts from both treaties are imprecise on where that boundary is located. The Superior and Huron Chiefs met in a Zagaswe'idiwin, a Treaty Council. These historic councils were an integral part of Anishinaabe governance, diplomacy and decision making in the past and were revived for this important work. Over the following months various treaty councils were held from Sault Ste. Marie to Red Rock in order to determine a without prejudice agreement on a boundary between the two treaties. Ultimately, by consensus, the Chiefs decided on a boundary for the purpose of past annuities compensation only. The boundary between the RHT and RST for other purposes will still need to be determined by the chiefs at a later date. Deciding where the boundary between the treaties is will be necessary, as annuities are calculated with reference to the natural resources from each treaty area.