



Robinson Huron Treaty
LITIGATION FUND

WHAT WE WILL TALK ABOUT TODAY



- 1% Fund & Recipients
- New Trust
- Litigation Update
 - Atikameksheng Motion to Withdraw from Representation Order
 - Serpent River First Nations Judicial Review
 - Robinson Superior Constitutional Review
- Go Forward Annuity Clause Augmentation Process

1% FUND



- 2012: Chief and Councils for the RHT Anishinaabek decided that former members of their communities were not to be forgotten in any Robinson Huron Treaty litigation or settlement for past annuity compensation.
- 2012: based on Anishinaabe legal principles, the Chiefs and Trustees of RHTLF decided to set aside funds for these individuals as part of the Compensation Disbursement Agreement (CDA). The CDA was part of the Settlement Agreement for past compensation.
- These funds are referred to as the 1% Fund - available for individuals who were unilaterally added or taken off the treaty list by the federal government's Indigenous Services Canada (ISC).

1% FUND RECIPIENTS



Eligible living Non-member individuals are those who were either:

- Prior to September 9, 2023, a registered member of one of the 21 RHT First Nations and received or were entitled to receive a RHT treaty payment and are no longer a registered member of one of the 21 RHT First Nations;
- **OR** an individual who was on the Sudbury General List on or prior to September 9, 2023.

Determining the amount of compensation:

- need to determine how many individuals qualify for the 1% Fund so *per capita* payments can be made.
- must have a good estimate on how many individuals are eligible for compensation to ensure that the 1% Fund has sufficient capital to compensate all eligible living individuals.

This calculation process to determine the amount of compensation is based on best practices in these types of claims.

1% FUND APPLICATION PROCESS



- There is NO application process currently in place due to slow information about the potential applicants received from ISC.
- We have and continue to accept requests for access to the online 1% fund portal on our website by potential applicants: www.rht1850.ca.
- All relevant and current available information on the 1% fund is posted on their specific portal.
- As available, updates on the application and application process will be shared on the 1% fund portal.
- An independent Administrator will be appointed to process individual applications and distribute payments.
- The successful eligible recipients will receive a one-time *per capita* payment on a without prejudice basis for past compensation.

RHTLF CONTINUES WITH A NEW TRUST



- The RHTLF, or the Existing Trust, was established on August 23, 2010.
- The RHTLF was established by the 21 RHT First Nations to pursue the annuity claims (past and present) stemming from the Robinson Huron Treaty of 1850.
- Upon completion of the Past Compensation Settlement Agreement, the settlement proceeds were received by the RHTLF and were then almost all distributed to the 21 RHT First Nations based on the amended Compensation Disbursement Agreement formula they agreed to.

NEW TRUST

The settlement proceeds that will be transferred to the new trust include:

- 1% Fund to be allocated to living previous annuitant eligible individuals of the 21 RHT First Nations or those living eligible individuals who were placed on a Sudbury General List by ISC. This will address the 1% Fund described above.
- 5% to be set aside for the collective purposes of advancing the rights and interests of the 21 RHT First Nations and their citizens (*the “Collective Purposes Fund”*).
Some of the priorities identified in the communities were: a war chest to defend RHT and specifically go-forward annuities; Anishinaabemowin revitalization, etc.

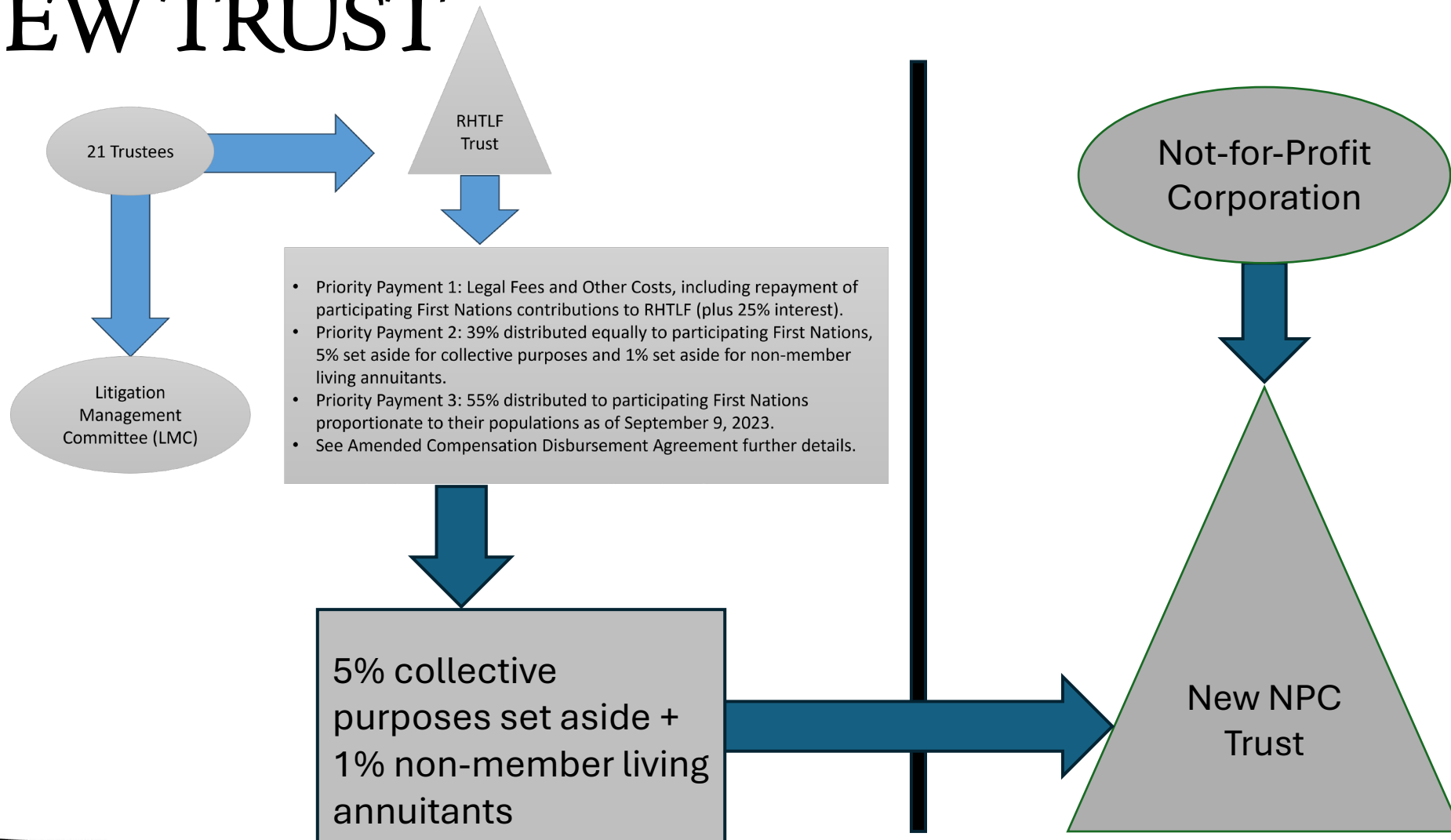


NEW TRUST



- The 1% Fund and 5 % Collective Purposes Fund currently held by the RHTLF will be deposited into a New Trust that must be created for the explicit purpose of holding, investing, disbursing and accounting for those funds.
- The New Trust work is underway and should be ready for discussion in the near future.
- The New Trust will provide the payments to the existing RHTLF for go forward litigation/negotiation from the 5% Collective Purposes Fund for example.

NEW TRUST



ATIKAMEKSHENG MOTION TO WITHDRAW FROM REPRESENTATION ORDER



- Chief Nootchtai advised the other 20 RHT Chiefs that that “Atikameksheng will now stand on its own, with the same determination that united us at the outset, but with the clarity that our path forward must be ours alone”.
- Therefore, the Atikameksheng lawyers are seeking an Amendment of the Representation Order, dated May 3, 2016, as follows:
 - Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollet, Dean Sayers and Roger Daybutch are authorized to bring these proceedings 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, except those that are members of the Temagami First Nation and except for the Atikameksheng Anishnawbek.

ATIKAMEKSHENG MOTION TO WITHDRAW FROM REPRESENTATION ORDER



- Order Sought:
 - Adding Atikameksheng as a party plaintiff to the [20 RHT First Nations] Action;
 - Any compensation awarded to the Plaintiffs in this matter through settlement or litigation shall not include any amount that may be due and owing to Atikameksheng Anishinabek related to any claims that Atikameksheng Anishinabek may have under the Treaty or any claims or causes of action as contained in pleadings filed by Atikameksheng Anishinabek in Ontario Superior Court File No. CV-08-00366890 (Boundary Claim); and
 - Atikameksheng Anishinabek has no entitlement to claim any portion of the compensation awarded to the Plaintiffs through settlement or litigation or otherwise assert a claim against the Plaintiffs in relation to same.

ATIKAMEKSHENG MOTION TO WITHDRAW FROM REPRESENTATION ORDER



Precedent Implications for the RHT Anishinaabek

- All 21 RHT First Nations agreed to be bound by the RHTLF governing process for the past and go-forward annuity case and the agreement has been in place since 2010. All 21 RHT First Nations benefitted from the past compensation settlement agreement.
- A judicial determination of the Motion will have application throughout the rest of the RHT First Nations and impact the resolution of the Go-Forward annuities litigation and/or negotiation and RHTLF and New Trust.
- The remaining 20 RHT First Nations will have to decide how to address this Motion.
- RHTLF is funding this case from the interest of the intended 5% Collective Purposes Fund

SERPENT RIVER FIRST NATION JUDICIAL REVIEW

Joanna Hammond et al v Serpent River First Nation 201 et al



The Application requests that the Federal Court (“FC”) review Serpent River Council’s decision related to the value of the per capita distribution (“PCD”) from the Serpent River share of the RHT Settlement compensation (the “Compensation”). The core of the complaint appears to be dissatisfaction with the per capita distribution amount so determined by Serpent River Council after several community engagements and the benefit of expert advice.

The Orders sought are:

1. To direct Chief and Council to comply with an alleged public legal duty to conduct a “meaningful and adequate process”; and,
2. To have the decision made by Chief and Council regarding the value of the PCD payments cancelled and set aside due to it being unreasonable and violated “requirements of procedural fairness” and that the FC refer the PCD amount decision back to Chief and Council to redetermine the amount based on instructions and directions requested as may be Ordered by the FC ; and,
3. An interim and/or interlocutory injunction that would prevent Chief and Council from spending any more of Serpent River’s share of the RHT Settlement compensation (except to make further PCD payments to eligible members of Serpent

SERPENT RIVER FIRST NATION JUDICIAL REVIEW



Precedent Implications for all 21 First Nations.

- The Application touches upon the question of whether annuities are an individual or a collective entitlement.
- A judicial determination of the Application could have application throughout the rest of the RHT Anishinaabek, potentially causing significant issues in terms of the trusts set up for future generations.
- All 21 RHT First Nations will benefit from resolving this case for the Past Settlement Agreement and future settlement or litigation on the Go-Forward annuities.
- RHTLF is funding this case from the interest of the intended 5% Collective Purposes Fund

ROBINSON SUPERIOR CONSTITUTIONAL REVIEW



The Review arose out of the Supreme Court of Canada (“SCC”) decision in Ontario (Attorney General) v Restoule which dealt with Ontario’s appeal of the Stage 1 and 2 decisions (“Restoule”). The SCC rendered a unanimous decision largely in favour of the Robinson Huron and Robinson Superior Treaty First Nations. For example:

- The Court confirmed the constitutional nature of the Robinson Treaties as “nation-to-nation agreements”;
- it upheld the application of principles of Anishinaabe law; and harshly criticized the Crown for being an “**historically dishonourable treaty partner**” over the failure to uphold the treaty augmentation promise for 150 years.
- The Court had strong language about the behaviours and actions of Canada and Ontario including that the Crown has “**severely undermined both the spirit and substance of the Robinson Treaties**”.

ROBINSON SUPERIOR CONSTITUTIONAL REVIEW



Due to the severity and duration of the Crown's breach, the SCC felt compelled to issue a declaratory judgment spelling out how the Crown ought to conduct itself in fulfilling the augmentation promise in the Robinson Treaties

(RHT & RST). It applies to the go-forward implementation of the Treaty. **At paragraph 304 of its Decision, the SCC held:**

1. Under the Augmentation Clause of the Robinson Treaties, the Crown has a duty to consider, from time to time, whether it can increase the annuities without incurring loss.
2. If the Crown can increase the annuities without incurring loss, it must exercise its discretion as to whether to increase the annuities and, if so, by how much.
3. In carrying out these duties and in exercising its discretion, the Crown must act in a manner consistent with the honour of the Crown, including the duty of diligent implementation.
4. The Crown's discretion must be exercised diligently, honourably, liberally, and justly. Its discretion is not unfettered and is subject to review by the courts.
5. The Crown dishonourably breached the Robinson Treaties by failing to diligently fulfill the Augmentation Clause.
6. The Crown is obliged to determine an amount of honourable compensation to the Superior plaintiffs for amounts owed under the annuities for the period between 1875 and the present.

ROBINSON SUPERIOR CONSTITUTIONAL REVIEW

- Paragraph 6 of the Decision deals specifically with the RST. This is because the RST was not able to come to a settlement with the Crown regarding past compensation. Therefore, the SCC issued a direction that Canada and Ontario engage in meaningful negotiations with the RST to come to a settlement on past compensation and it gave a deadline six (6) months to negotiate a settlement for past compensation.
- While the Court acknowledged that the Crown had a certain degree of discretion under the Treaty, it also emphasized that the Crown had a duty to diligently implement the Promise and that it was bound to act honourably.
- In the event of failure to achieve a negotiated settlement, the SCC further ordered that at the end of the six (6) month period the Crowns would have to exercise its discretion and present an offer for past compensation. Canada & Ontario presented an offer of 3.6 billion which was rejected by the Superior First Nations).The SCC directed that if the RST plaintiffs were not satisfied with the offer, they could request a Court to review the offer regarding its adequacy and the Crown would have to justify the offer, in accordance with the instructions of the SCC.



ROBINSON SUPERIOR CONSTITUTIONAL REVIEW



The SCC outlined five (5) factors to guide the Crowns' exercise of discretion:

1. the nature and severity of the breaches;
2. the number of Anishinaabe and their needs;
3. the benefits the Crown has received from the treaty territories and its expenses over time;
4. the wider needs of other Indigenous populations and the non-Indigenous populations of Ontario and Canada; and,
5. the principles and requirements flowing from the honour of the Crown, including its duty to diligently implement its sacred promise under the treaty to share in the wealth of the land if it proved profitable.

These factors also have potential application to the RHT go-forward implementation. It is also important to note that the SCC said that this list of factors is not exhaustive.

ROBINSON SUPERIOR CONSTITUTIONAL REVIEW



RHT's Argument for the Go Forward Annuities Case in this Constitutional Review

Regarding the written submissions filed on behalf of the RHT Anishinaabek, the following positions and arguments were made:

- a)** no position was taken on the Crowns' offer of past compensation for the RST First Nations;
- b)** focus is on potential effects the Review could have on the implementation of the RHT go-forward annuities case, specifically, about the nature of the Court's review, the legal constraints on the Crown's exercise of discretion in implementing the augmentation promises, and how those constraints affect procedural and substantive aspects of implementing the Robinson Treaties; and,
- c)** that the Anishinaabe perspective and principles are a necessary part of the Review and on the go forward.

RHTLF funded the intervention of the RHT Anishinaabek from the interest of the intended 5% Collective Purposes Fund

GO FORWARD ANNUITIES AUGMENTATION



The Supreme Court of Canada decision in July 2024 has provided important clarifications for the go-forward annuities pursuit. It explicitly pointed out that the Crown has a duty of diligent implementation:

- The Crown is subject to a duty to diligently implement or fulfill that promise, and its failure to do so is a breach of the Robinson Treaties. The duty of diligent implementation holds the Crown responsible for making good on its treaty promises. This duty flows directly from the honour of the Crown and requires the Crown to take a broad purposive approach to the interpretation of a promise and to act diligently to fulfill it. This requires that the Crown seek to perform the obligation in a way that pursues the purpose behind the promise.

GO FORWARD ANNUITIES AUGMENTATION



- The augmentation clause creates a mandatory obligation to increase the annuity.
- This annuity can be further increased where the economic conditions are such that the Crown can increase the annuity without incurring a loss.
- The Crown is required to exercise its discretion and determine whether to increase the annuities, by how much, and how often.
- The Crown must exercise its discretion diligently, honourably, liberally, and justly, while engaging in an ongoing relationship with the Anishinaabe based on the values of respect, responsibility, reciprocity and renewal.

GO FORWARD ANNUITIES AUGMENTATION



The SCC of decision also had critical clarification on the collective versus individual right nature of the annuities clause:

- The Supreme Court of Canada’s concluded that annuity rights themselves are a collective right and made to the “Chiefs and their tribes” (para 196).
- The Court’s reference to individual disbursements was an observation about historical payment methods and administrative practices, and not a statement about the legal nature of the Treaty annuity rights.
- The Court made it clear that while annuity payments have, in practice, been issued to individuals, this did not convert Canada’s treaty obligations into an individual right, nor does it create an obligation to pay an annuity to individuals.
- In essence, Treaty annuity payments are collective rights because they stem from agreements made with the RHT First Nations, are designed to benefit the entire collective over time, and continue to reflect the shared and ongoing relationship between First Nations and the Crown.

GO FORWARD ANNUITIES AUGMENTATION



- Annuity payments reflect the ongoing rights of the RHT Anishinaabek and are intended to support First Nation communities across generations and consistent with Anishinaabe laws, customs and traditions. As such, these rights also extend to future generations.
- The requirement to provide an annuity payment to the “Chiefs and their Tribes” ensures the continued recognition of a First Nation’s rights, cultural identity, distinctiveness, and evolving relationship with the Crown.
- The objective now is to make an updated arrangement regarding annuities augmentation go forward to address how the RHT Anishinaabek, Canada and Ontario will share the future revenues of the Robinson Huron Treaty territory.
- The issue about how the revenues will be distributed among the communities and among the First Nations members and their future generations will be a matter of internal discussion among the RHT Anishinaabek.

GO FORWARD ANNUITIES AUGMENTATION



- The RHT Anishinaabek are not starting from scratch in the negotiations. There is a framework for negotiations attached to the Settlement Agreement for Past Compensation. It is a starting point to the negotiations. If negotiations fail, litigation will be pursued to resolve the go-forward annuity.

Commitment to Co-Develop an Agreement for Future Implementation

4. The Parties agree to enter into discussions to co-develop a framework to implement the Augmentation

Promise moving forward (the “ Implementation Agreement”) in the spirit and intent of the Treaty.

5. The Implementation Agreement may address:

- a. The structure of the body through which the Parties will work together to implement the Augmentation Promise;
- b. The form of the arrangement or arrangements through which any increased Annuities will be paid;
- c. The deliberative process or processes in which the Parties will participate to implement the Augmentation Promise; and
- d. The information that will be shared amongst the Parties to meaningfully participate in the deliberative process or processes regarding the implementation of the Augmentation Promise.

GO FORWARD ANNUITIES AUGMENTATION



e. the continuing relationship to and stewardship of the land of the Robinson Huron Treaty Anishinaabek, as well as the public interests related to the Treaty territory.

f. a dispute resolution process to address any disputes that arise in relation to the Implementation Agreement and the Augmentation Promise.

6. The Parties agree to retain a Mediator (or Mediators) to assist, as necessary, in the co-development of the Implementation Agreement.

7. The mediation will be conducted in a manner that respects both the Crown and Anishinaabe perspectives and legal orders, including appropriate Anishinaabe protocols.

8. Canada and Ontario will share the costs of the mediator.

GO FORWARD ANNUITIES AUGMENTATION



- To date no meetings have taken place with Canada and Ontario
- Canada and Ontario have been preoccupied with the Robinson Superior negotiation and Constitutional Review process, and they have also undergone elections
- The governments have also been preoccupied with trade and tariff matters with the US.
- The RHTLF is waiting for a response from Canada regarding letters that have been sent to Prime Minister Carney and Premier Ford to get the go-forward annuities augmentation negotiations process started
- Ontario responded to our letter on June 18, 2025, agreeing to commence negotiations.

GO FORWARD COMMUNICATIONS



The role of RHTLF Communications is to continue supporting the position of the Robinson Huron Treaty Litigation Fund as a trusted, accurate and valuable source of information on the RHT Treaty Settlement for past compensation, the go forward on annuity augmentation and other communications support of RHTLF initiatives.

GO FORWARD COMMUNICATIONS

October 17, 2024

Motion by Chiefs/Trustees:

RESOLVED THAT the Trustees hereby acknowledge the achievements of the Settlement Agreement for Past Compensation and the Supreme Court of Canada decision in the Restoule case and commit to building on the momentum from these achievements for the go-forward negotiations and hereby mandate the Litigation Management Committee:

4.To work with the RHTLF Communications Director and First Nation Communications officials to develop a plan for the consideration of the Chiefs and Trustees to ensure ongoing consultations and engagement with our First Nations citizenship regarding progress on implementation of the go-forward implementation of the Treaty Augmentation Promise.



GO FORWARD COMMUNICATIONS



GOAL:

To assist RHT First Nations on and off reserve members in bettering understanding what's involved with the 'go forward' priorities.

There is an immediate need to provide information; annuity augmentation, Council Fire, new trust etc.

How we will communicate:

- Monthly updates/communications materials to share with leadership and communities
- Content such as historical information, educational content, FAQs, videos, news stories, visuals
- Share on RHTLF social media & website, RHT FN social media & websites, website email blasts/mail outs
- Anishinaabemowin communications; video, audio, print



RHTLF COMMUNICATIONS NETWORK

- ✓ The Network was established 2022.
- ✓ Purpose: to provide a direct and engaging platform for our RHT First Nation communications/RHT staff to come together to discuss and enhance on the ground communications of the RHT annuities case and go forward on annuity augmentation.
- ✓ We focus on creating awareness, understanding, education, engagement opportunities with our band members and create communications materials.



Key Priorities Overview

175th Commemoration RHT Gathering

- ✓ This year we commemorate 175 years since the Treaty was signed
- ✓ September 7-9, 2025, Roberta Bondar Park Pavillion, Baawaating (Sault Ste Marie)
- ✓ Co-hosts: Batchewana and Garden River First Nations
- ✓ Poster/flyer and Vendor callouts underway
- ✓ Registration and information/updates:

www.rhtreatygathering.com

ROBINSON TREATY OF GATHERING



Key Priorities Overview Annual Treaty Gathering

'Anishinaabe Relationship and Responsibility to Creation'

- ✓ Theme provided by RHT
Cultural Advisor Leroy
Bennett.
- ✓ The theme speaks to
reconnecting our
relationships first with
ourselves, then others and
Creation.
- ✓ Achieving this will help our
Territory toward respecting
and uniting as one –
Anishinaabek.

ROBINSON TREATY OF GATHERING



Key Priorities Overview Annual Treaty Gathering

First two days (Sept 7-8):

- ✓ Cultural teachings; ie: *clans*, *fire keepers*, *pipes*
- ✓ History of the treaty
- ✓ RHTLF and RHW updates
- ✓ Theatrical performance/music
- ✓ Drone show
- ✓ Feast Treaty and Pipes
- ✓ RHT documentary screening

Third day (Sept 9):

- ✓ Federal, provincial, First Nation dignitaries
- ✓ Remarks, Gifting Ceremony
- ✓ Feast

ROBINSON TREATY OF GATHERING

