SUPREME COURT OF CANADA

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Case in Brief: *Ontario (Attorney General) v. Restoule*

Judgment of July 26, 2024 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2024 SCC 27

The Supreme Court requires the Crown to negotiate or, failing agreement, determine the compensation it owes to First Nations for breaching its treaty promises.

This judgment clarifies the rights and obligations of the Crown and the Anishinaabe of Lake Huron and Lake Superior under two historic treaties, and what the Crown must do to address its breaches of those treaties.

In 1850, the Anishinaabe of Lake Huron and Lake Superior entered into treaties with the Crown, known as the Robinson Treaties. Under the treaties, the Anishinaabe agreed to cede their territories to the Crown and the Crown promised to provide in return an annuity (a perpetual annual payment). The treaties provided for the increase of the annuities over time under certain circumstances. This part of the treaty, known as the "Augmentation Clause", also provided that the amount "paid to each individual" each year would not exceed £1 (equivalent to $4), but the Crown had the power to increase it to a higher amount chosen in its discretion. The annuities were increased to $4 to each individual in 1875, but have not increased since then.

The Anishinaabe of Lake Superior ("Superior plaintiffs") filed a claim against the Crown in 2001 and the Anishinaabe of Lake Huron filed their own claim in 2014 ("Huron plaintiffs"). Both plaintiffs alleged the Crown had breached the Augmentation Clause and its fiduciary duty. Fiduciary duty means that Canada is obliged to act in the best interest of Indigenous Peoples. The plaintiffs asked the court to compensate them.

The trial judge concluded that, under the Augmentation Clause, the Crown must increase the annuities when the economic circumstances warrant it, reflecting a "fair share" of the revenues received by the Crown from the land. The trial judge said that the honour of the Crown and a fiduciary duty required the Crown to diligently implement the Augmentation Clause.

Ontario appealed from these decisions, arguing that the trial judge was wrong in her interpretation of the Robinson Treaties. The Court of Appeal allowed Ontario's appeals in part. The Court of Appeal agreed that the honour of the Crown applied to the case. A majority of the Court of Appeal agreed that the Crown is required to increase the annuities when the economic conditions warrant it, but did not agree that the treaties promised a fair share of revenues. The Court of Appeal also agreed that the Crown's power under the Augmentation Clause to decide whether to increase the annuities is not unfettered. Unfettered means without any constraints. The Court of Appeal also found that the Crown was not under a fiduciary duty in relation to the Augmentation Clause.

Ontario appealed to the Supreme Court of Canada on a number of issues, including the proper interpretation of the Augmentation Clause, the nature and content of the Crown's obligation to give effect to that clause, and the appropriate remedy for its breach. The Huron and Superior plaintiffs cross-appealed on the question of the Crown's fiduciary duties. Before the Court, neither Canada nor Ontario disputed that they are in longstanding breach of the annuity promises.

The Supreme Court has allowed Ontario's appeals in part, dismissed the plaintiffs' cross-appeals, and issued a declaration about the rights and obligations under the Augmentation Clause.

An opportunity for negotiation and agreement outside the courtroom has greater potential to renew the treaty relationship, advance reconciliation, and restore the honour of the Crown.

Writing for a unanimous Court, Justice Jamal held that the interpretation of historic Crown-Indigenous treaties is reviewable for correctness. This means that an appeal court can substitute its interpretation for that of the lower court if deemed incorrect. Applying this standard of review to this case, along with the relevant treaty interpretation principles, Justice Jamal said that the Crown has a duty to consider, from time to time, whether it can increase the annuities without incurring loss. If the Crown can increase the annuities beyond $4 to each individual, it must exercise its discretion and decide whether to do so and, if so, by how much. This discretion is not unfettered; it must be exercised liberally, justly, and in accordance with the honour of the Crown. The frequency with which the Crown must consider whether it can increase the annuities must also be consistent with the honour of the Crown.

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Justice Jamal added that, given the longstanding and egregious nature of the Crown's breach of the Augmentation Clause, the Crown must exercise its discretion and increase the annuities with respect to the past. Having already reached a negotiated settlement concerning past breaches with the Huron plaintiffs, the Crown is directed to engage in time-bound and honourable negotiation with the Superior plaintiffs about compensation for past breaches. Finally, although no specific fiduciary duties apply in respect of the augmentation promise, the honour of the Crown requires the Crown to diligently fulfill this promise.

Breakdown of the decision: ***Unanimous***: Justice Jamal allowed Ontario's appeals in part and dismissed the Huron and Superior plaintiffs' cross-appeals (Chief Justice Wagner and Justices Karakatsanis, Côté, Rowe, Martin, Kasirer, O'Bonsawin and Moreau agreed)

More information: Decision | Case information | Webcast of hearing

Lower court rulings: Decision (Interpretation of Treaties, Honour of the Crown, and Fiduciary Duties) (Ontario Superior Court of Justice) | Decision (Crown Immunity and Limitations Defences) (Ontario Superior Court of Justice) | Appeal (Court of Appeal for Ontario)

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