



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
ESTATES LIST**

**B E T W E E N:**

**MIKE RESTOULE, PETER RECOLLET, DUKE PELTIER, ANGUS TOULOUSE,  
PATSY CORBIERE, AND WILMA-LEE JOHNSTON in their capacities as trustees and  
members of the LITIGATION MANAGEMENT COMMITTEE OF THE ROBINSON  
HURON TREATY LITIGATION FUND**

Applicants

- and -

**CRAIG NOOTCHAI in his capacity as TRUSTEE OF THE ROBINSON HURON  
TREATY LITIGATION FUND**

Respondent

APPLICATION UNDER THE TORONTO ESTATES LIST as an application under Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 and Section 60 of the *Trustee Act*, RSO 1990, c T.23 concerning the obligations of trustee acting under a trust indenture with respect to the payment of legal fees. In the alternative, the application concerns other matters relating to trusts which may properly be directed to be heard on the Toronto Estates List.

**NOTICE OF APPLICATION  
(Request For Directions)**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 9<sup>th</sup> Floor, Toronto, ON M5G 1R7

on a day to be set by the registrar.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar  
330 University Avenue, 9<sup>th</sup> Floor  
Toronto, ON M5G 1R7

**TO: CRAIG NOOTCHAI**  
20 Reserve Road  
Naughton, ON P0M 2M0

and

c/o **MCCARTHY TETRAULT LLP**  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto, ON M5K 1E6

Lawyers for Craig Nootchai and Atikameksheng Anishnawbek

**AND TO: STOCKWOODS LLP**  
TD North Tower  
77 King Street W., Suite 4130  
PO Box 140  
Toronto, ON M5K 1H1

Lawyers for the Interested Party, Nahwegahbow Corbiere  
Genoodmagejig/Barristers & Solicitors

**THE APPLICANTS MAKE APPLICATION FOR:**

- (a) If necessary, an Order abridging the time for service and filing of this Notice of Application and the application record or, in the alternative, an Order dispensing with same.
  
- (b) Directions from this Honourable Court regarding the interpretation of the trust indenture dated August 23, 2010 (the “**Indenture**”) which formed the Robinson Huron Treat Litigation Fund (the “**RHTLF**”) and the obligations of the trustees of the RHTLF in relation to certain funds received in partial settlement of the litigation bearing Court File No. C-3512-14 (the “**Annuities Claim**”), and in particular:
  - (i) Whether the amounts received in partial settlement of the Annuities Claim (the “**Compensation/Settlement Proceeds**”) are an “Asset” of the RHTLF as that term is defined in the Indenture;
  
  - (ii) Whether the trustees of the RHTLF are required to pass accounts before distributing the Compensation/Settlement Proceeds in accordance with the Compensation Disbursement Agreement entered into pursuant to Article 3.3 of the Indenture, including payment of legal fees;
  
  - (iii) Whether section 26 of the *Solicitors Act*, RSO 1990, c S.15 applies to a partial contingency fee agreement dated June 17, 2011 (the “**Contingency Fee Agreement**”) made between the RHTLF and its lawyers (the “**Lawyers**”).

(c) Such further and other relief as this Honourable Court may deem just.

## 2. THE GROUNDS FOR THE APPLICATION ARE:

### *Background*

(a) On August 23, 2010, the RHTLF was established pursuant to the Indenture.

(b) The RHTLF has 22 trustees (the “**Trustees**”) who are appointed/selected in accordance with various requirements set out in the Indenture.

(c) The RHTLF's beneficiaries include the settlors of the RHTLF (the “**Settlors**”) and the individuals who are entitled to receive annuities under the Robinson Huron Treaty of 1850 (the “**Annuitants**”).

(d) The purposes of the RHTLF include, *inter alia*:

(i) to undertake and pursue litigation and/or negotiations related to the Annuities Claim on behalf of the beneficiaries;

(ii) to retain, pay and provide ongoing instructions to legal counsel;

(iii) to develop a Compensation Disbursement Agreement for the approval of the Settlers of the RHTLF; and

(iv) to serve as a vehicle for the receipt of any compensation/settlement proceeds and for the distribution of said proceeds, in accordance with the Compensation Disbursement Agreement.

(e) The Indenture defines “Assets” to exclude:

- (i) anything paid out or distributed (whether out of income or capital) in the normal course of administration or pursuant to the provisions of the Indenture; and
- (ii) any compensation/settlement proceeds distributed according to the terms of the Compensation Disbursement Agreement.

***Decision Making by Trustees***

- (f) The Indenture sets out a process by which the Trustees are to make decisions in relation to the execution of the terms of the Indenture.
- (g) The process requires that the Trustees first make reasonable efforts to reach consensus, failing which the Trustees may decide to ask the Chiefs in Assembly to designate an Elder or Elders to assist in achieving consensus.
- (h) If consensus cannot be achieved, the Indenture provides that a matter may be determined by a 70% majority vote by the Trustees.

***The Litigation Management Committee***

- (i) Pursuant to the Indenture, the Trustees formed a Litigation Management Committee (the “**LMC**”) charged with the responsibility of taking all necessary steps to advance the Annuities Claim.
- (j) The Applicants Mike Restoule, Peter Recollet, Duke Peltier, Angus Toulouse, Patsy Corbiere and Wilma-Lee Johnston are together the duly appointed LMC.

### ***The Contingency Fee Agreement***

- (k) On June 17, 2011, the RHTLF executed the Contingency Fee Agreement thereby retaining the Lawyers as counsel to the RHTLF in relation to the Annuities Claim.

### ***The Annuities Claim***

- (l) In 2014, the Annuities Claim was commenced by way of representative action pursuant to Rule 12.08 of the *Rules of Civil Procedure*.

- (m) On May 3, 2016, by Order of the Ontario Superior Court of Justice, Mike Restoule, Patsy Corbiere, Duke Peltier, Peter Recollect, Dean Sayers and Roger Daybutch were authorized as the representative plaintiffs (the “**Representative Plaintiffs**”).

- (n) The RHTLF is not a party to the Annuities Claim.

### ***Settlement***

- (o) On January 18, 2024, the Representative Plaintiffs and RHTLF (on behalf of the Robinson Huron Treaty Anishinaabek) entered into a settlement agreement with the King in Right of Canada (“**Canada**”) and the King in Right of Ontario (“**Ontario**”) which partially settled the Annuities Claim (the “**Settlement Agreement**”).

- (p) The Settlement Agreement obligates Canada and Ontario to pay the Compensation/Settlement Proceeds to the RHTLF pursuant to certain Directions to Pay appended to the Settlement Agreement.

(q) On February 26, 2024, Morawetz CJ granted partial judgment in accordance with the Settlement Agreement.

(r) The Compensation/Settlement Proceeds have been received by the RHTLF from Canada and Ontario.

***Approval of Payment to the Lawyers***

(s) On or about April 22, 2024, a 70% majority of the Trustees voted in favor of approving the payment of \$255 million to the Lawyers in satisfaction of amounts owing under the Contingency Fee Agreement.

(t) The RHTLF has now transferred the \$255 million to the Lawyers, who have agreed not to disburse these funds pending the resolution of this Application.

***Issue Arises***

(u) One of the Trustees, the Respondent in this Application, has now taken the position that:

(i) The Contingency Fee Agreement must be laid before an assessment officer pursuant to section 26 of the *Solicitors Act* before payment is made to the Lawyers; and

(ii) Payment of \$255 million to the Lawyers may be considered a wasting of assets held in trust by the RHTLF.



(v) On June 7, 2024, two of the Trustees and a third individual commenced an application in Toronto bearing Court File No. CV-24-00721782-00ES which seeks, *inter alia*:

(i) A direction requiring that the RHTLF pass accounts in relation to the Lawyers' legal fees;

(ii) A direction that the Contingency Fee Agreement be laid before an assessment officer; and

(iii) A declaration that the Lawyers have breached the *Solicitors Act*.

(w) Neither the LMC nor the other Trustees are named as respondents in that application.

(x) The LMC accordingly seeks the direction of this Honourable Court as set out in the prayer for relief, above.

***Urgency***

(y) This Application is urgent.

(z) The RHTLF is currently holding the Compensation/Settlement Proceeds totalling approximately \$9,745,000,000.

(aa) The First Nations which will be receiving funds from the Compensation/Settlement Proceeds have been proceeding on the basis that their share of the funds would be received by no later than early August, 2024.

*Statutes*

(bb) Section 60 of the *Trustee Act*, RSO 1990, c T.23.

(cc) Section 26 of the *Solicitors Act*, RSO 1990, c S.15.

(dd) Rule 14.05(3) of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

(ee) Such further and other grounds as Counsel may advise and this Honourable Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THIS MATTER:**

(a) The Affidavit Duke Peltier, to be affirmed; and

(b) Such further and other evidence as this Honourable Court permits.

June 10, 2024

**SINGLETON URQUHART REYNOLDS VOGEL LLP**  
150 King Street West, Suite 2512, PO Box 24  
Toronto, ON M5H 1J9

**PETER WARDLE** (LSO No. 26412D)

pwardle@singleton.com

Tel: 416-585-8604

**EVAN RANKIN** (LSO No. 73016G)

erankin@singleton.com

Tel: 416-585-8615

Fax: 416-585-9458

Lawyers for the Applicants

**MIKE RESTOULE *et al*** and  
Applicants

**CRAIG NOOTCHAI in his capacity as  
TRUSTEE OF THE ROBINSON HURON  
TREATY LITIGATION FUND**

Respondent

Court File No.:

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**ESTATES LIST**

Application commenced at Toronto

**NOTICE OF APPLICATION**  
**(REQUEST FOR DIRECTIONS)**

**SINGLETON URQUHART REYNOLDS VOGEL LLP**  
150 King Street West, Suite 2512, PO Box 24  
Toronto, ON M5H 1J9

**PETER WARDLE** (LSO No. 26412D)

[pwardle@singleton.com](mailto:pwardle@singleton.com)

Tel: 416-585-8604

**EVAN RANKIN** (LSO No. 73016G)

[erankin@singleton.com](mailto:erankin@singleton.com)

Tel: 416-585-8615

Fax: 416-585-9458

Lawyers for the Applicants

15200.001