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## WILLIAMS TREATIES FIRST NATIONS

### MEMBER UPDATE

The Williams Treaties First Nations consist of the Chippewas' of Beausoleil First Nation, Georgina Island First Nation and the Rama First Nation and the Mississaugas' of Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation and the Scugog Island First Nation.

The Williams Treaties First Nations have an outstanding claim against Canada and Ontario concerning the signing of the 1923 Williams Treaties. The result of that claim is currently before the federal court of Canada – Trial Division in *Alderville et al. v. The Queen et al.*

In an effort to resolve their outstanding claim against Canada and Ontario concerning the 1923 Williams Treaties, the seven signatory First Nations have historically pursued parallel processes involving both litigation and negotiation efforts.

The Williams Treaties First Nations filed their action against Canada for breach of fiduciary duty in 1992. The action is now set out in the fifth further amended statement of claim filed in 2005 and recently, we have asked the Court to allow us to amend the claim in response to a recent Supreme Court decision regarding the Honour of Crown.

As relief for the breach of its fiduciary duty, upon success, we are asking the Court to order compensation for financial damages that were the result of this breach, including the ability to add to reserves the purchase of lands with any compensation awarded and setting aside of any available federal lands for addition to reserve lands and our costs in pursuing this claim throughout the years. Economist experts have estimated the claim in the hundreds of millions, however, the case must be argued and the Court will have the final judgement.

While the action *Alderville et al. v. The Queen et al.* commenced at May 7, 2012 in Rama First Nation and again at October 22, 2012 in Toronto, ON. The trial was scheduled in two phases. The first phase saw the Court attend the Curve Lake and Rama First Nation communities for two weeks to hear testimony of the Williams Treaties First Nations community witnesses at May 7, 2012. The second phase of the trial was scheduled for eight months in length in Toronto from Monday through Thursday for three weeks out of each month commenced at October 22, 2012.

However, we have been faced with ongoing delays due to motions filed by the Crowns in relation to change of their counsel, the nature of the claim as it relates to Aboriginal title, and the amendment of our pleadings and then appeals of decisions of the Court in our favour on these same motions.

We have also had to argue against an application to intervene from the Ontario Federation of Anglers and Hunters (OFAH) that seeks to dismiss our claim based on the *Howard* decision at the Supreme Court of Canada. It is expected that we will receive the decision of the Court on the OFAH application by the end of January 2014.

These motions that have attempted to quash and/or delay our claim have resulted in the loss of both time and financial resources of the First Nations as we continue to fight to have our claim heard and resolved in the Court. It is estimated that we are now approximately six months off schedule as a result.

In preparation for the trial, counsel met with and prepared the Williams Treaties First Nations community witnesses for examination. These witnesses include elder and other community members representing each First Nation of the Williams Treaties First Nations. This evidence was heard at Phase I of the trial at the Curve Lake and Rama First Nations community centres.

As part of their preparation for their action, the Williams Treaties First Nations retained the services of many expert witnesses to produce the evidence necessary to advance our claim. The hearing of this evidence began with historical experts, Dr. James Morrison, Dr. Janet Armstrong. Dr. Michael Thoms is expected to take the stand at March 2014. The evidence will finish with economist experts and then the Crowns will present their expert evidence in rebuttal.

Additionally, at October 29, 2012, Canada took the position before the Court that the Williams Treaties did not include a surrender of the pre-existing treaty rights of the Williams Treaties First Nations to hunt and fish for food, social and ceremonial purposes in their traditional territories covered by clause three of the Williams Treaties, which includes the Treaty 20 (1818) covering over two million acres. As a result, pending confirmation of the Court on Canada's position, Ontario will not take any enforcement action (except in certain circumstances) against members of the Williams Treaties First Nations. Negotiations are ongoing with Ontario Ministry of Natural Resources and Ministry of Aboriginal Affairs on the effective implementation of Treaty 20 rights. We also continue to press for the negotiated resolution of the claim as a whole.

It is important to note that the claim does not explicitly include harvesting rights as a relief but rather claims that the Crown breached its fiduciary duty by not protecting those rights that were reserved in previous treaties and requested reserved in the Williams Treaties and requests financial compensation for such breach. The First Nations had previously gone to the United Nations to attempt to reinstate harvesting rights without success. At this point, Canada and Ontario have agreed (pending confirmation from

Court) that the 1923 treaties did not include Treaty 20 and other pre-confederation treaties in the clause three areas of the Williams Treaties.

The claim differs from specific claim settlements that some First Nations have experienced – in that there is no distribution of claim monies or settlement contemplated at this time. While the First Nations are requesting financial compensation as part of their relief, it is premature to conclude how any settlement will be distributed as it is possible that the action may make its way to the Supreme Court of Canada if appealed. That said, the First Nations have persevered in their action against Canada and hope to conclude the trial by late fall 2014.

Members are encouraged to attend the trial in support of their action against Canada at the Federal Court 180 Queen Street West, Toronto, Ontario. Court is scheduled to be in session from Monday – Thursday every week. However, due to the nature of the case, this schedule is subject to change, so if you are planning to attend the trial, you may want to contact us in advance to ensure court is in session upon your arrival.

Should you have any questions or require further information, please contact your Chief and Council or Karry Sandy McKenzie, Williams Treaties First Nations Process Coordinator at 705-792-5087 or [k.a.sandy-mckenzie@rogers.com](mailto:k.a.sandy-mckenzie@rogers.com) .

**Williams Treaties First Nations – Costs from April 1, 1999 – December 31, 2013:**

<b>FISCAL YEAR</b>	<b>COSTS</b>
2013-2014 (est.)	\$2,225,019.23
2012-2013	\$2,267,422.90
2011-2012	\$723,846.01
2010-2011	\$1,080,995.00
2009-2010	\$1,418,525.00
2008-2009	\$411,698.00
2007-2008	\$756,125.47
2006-2007	\$520,776.99
2005-2006	\$520,002.78
2004-2005	\$279,887.87
2003-2004	\$594,897.15
2002-2003	\$489,090.78
2001-2002	\$251,817.98
2000-2001	\$228,501.23
<b>TOTAL</b>	<b>\$11, 768,609.39*</b>

\*The legal costs of pursuing the Williams Treaties First Nations claims over the period 2000-2014 has included the preparation of the claim including experts, community witnesses, research, United Nations application, Filing and amendment of claim (Sixth Amendment current draft), Arguing against various motions and application from intervener, etc.