ROBINSON HURON TREATY LITIGATION FUND
c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Tel: Office: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

FOR IMMEDIATE RELEASE

August 29, 2017

Robinson Huron Treaty Anishinaabek Chiefs Commend Prime Minister Trudeau on Structural Changes, But Point to Disconnect Between Action and Words on Treaty Annuities Claim

Sault Ste. Marie, ON – Anishinaabek Chiefs representing the Robinson Huron Treaty, and its 30,000 beneficiaries in northern Ontario, today commended Prime Minister Trudeau for announcing structural changes to the outdated colonial Indian Affairs structure. But they also pointed to the huge disconnect between what the federal government is saying and what it is doing about treaty rights and reconciliation. The Robinson Huron Treaty Anishnaabek launched a court action in 2014 related to the failure of Canada and Ontario to live-up to the promise in the treaty to increase their annuities as revenues from their treaty territory increased. The annuities were last increased in 1875 to the current level of $4.00 per year.

Ogimaa/Chief Duke Peltier of Wiikwemkoong and Ogimaa/Chief Dean Sayers of Batchewana, said "Actions speak louder than words". The Chiefs released a letter dated August 22, 2017, to Minister Carolyn Bennett, which expresses frustration over the refusal of the federal government to engage in reconciliation talks to settle the litigation. They were also sharply critical of the adversarial tactics and racist arguments being employed by federal lawyers in the litigation.

The letter to Minister Bennett says:

"We are writing to express, in good faith but in no uncertain terms, our profound disappointment regarding the clear and complete disconnect between your government's enlightened words and hopeful statements and the actions of your government in dealing with our Claim. Your letter says: "The Government of Canada places a high priority on renewing a nation-to-nation relationship with Indigenous Peoples. We are committed to developing a partnership based on recognition of rights, respect and cooperation." Yet, by its actions, your government is doing the exact opposite!"

"We wrote to the Prime Minister on August 21st (2016) in the hopes that your government's stated commitment to reconciliation would provide us with an opportunity to resolve our claim through negotiation rather than litigation. Unfortunately, not only have your officials rejected our overtures at reconciliation, your lawyers are advancing arguments and evidence in the litigation that can only be described as outdated, obsolete, ethnocentric, adversarial and inflammatory. Needless to say, they reflect attitudes that are contrary to the Truth and Reconciliation Commission Report and the

UN Declaration on the Rights of Indigenous Peoples."

Copies of the Bennett letter were sent to Prime Minister Trudeau and Justice Minister, Jody Wilson-Raybould, who recently released a set of Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.

This year is the 167th Anniversary of the Robinson Treaties. Under the Robinson Huron Treaty, signed on September 9th, 1850, the Anishinaabek ("Ojibwe") agreed to share their lands and resources with the newcomers -- approximately 35,700 square miles of territory. The treaty territory covers the lands north of Lake Huron from Penetanguishene to beyond Sault Ste. Marie, up to the height of land. The Robinson Superior Treaty, signed on September 7th, 1850, covers lands north of Lake Superior, from North of Sault Ste. Marie to Thunder Bay. The Robinson Treaty territories have yielded vast amounts of revenues from forestry, mining and other resource development activities over the years, yet the annuities remain at a mere $4.00 per year. is also being litigated.

The court action, involving both the Treaties, is scheduled to start on September 25th, 2017, in the Ontario Superior Court in Thunder Bay, after which it will move to Manitoulin Island, Garden River and Sudbury.

In the letter to Minister Bennett, Chiefs Peltier and Sayers conclude by saying:

"We can only hope that your words and Canada's announcement of its Principles Respecting the Government of Canada's Relationship with Indigenous Peoples and the need for a new litigation strategy will combine to cause Canada to negotiate, rather than to litigate, a resolution of our treaty annuities claim. Only in this way can reconciliation truly be reached."

-30-

For more information, contact:
Chief Dean Sayers
Phone: 705-257-1696
Ogimaa Duke Peltier
Phone: 705-919-3871
Mike Restoule
Phone: 705-498-7353
Email: rhttrust@outlook.com

ROBINSON HURON TREATY TRUST FUND

c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Office Tel: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

August 22, 2017

The Honourable Carolyn Bennett Via: Email and Courier
Minister of Indigenous and Northern Affairs
Room 173, East Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister Bennett:

This is a response to your letter dated July 24, 2017, which is a response to our letter to Prime Minister Trudeau dated August 21, 2016, regarding the Robinson Huron Treaty Annuities Claim.

We are writing to express, in good faith but in no uncertain terms, our profound disappointment regarding the clear and complete disconnect between your government's enlightened words and hopeful statements and the actions of your government in dealing with our Claim. Your letter says: "The Government of Canada places a high priority on renewing a nation-to-nation relationship with Indigenous Peoples. We are committed to developing a partnership based on recognition of rights, respect and cooperation." Yet, by its actions, your government is doing the exact opposite!

We wrote to the Prime Minister on August 21st in the hopes that your government's stated commitment to reconciliation would provide us with an opportunity to resolve our claim through negotiation rather than litigation. Unfortunately, not only have your officials rejected our overtures at reconciliation, your lawyers are advancing arguments and evidence in the litigation that can only be described as outdated, obsolete, ethnocentric, adversarial and inflammatory. Needless to say, they reflect attitudes that are contrary to the Truth and Reconciliation Commission Report and the *UN Declaration on the Rights of Indigenous Peoples*.

We will provide you with just a few of the most egregious examples. Canada's Expert, **Professor Alexander von Gernet,** states in his Report:

> I believe it is safe for me to express (a rare) certainty that no Anishinaabe person living today would bring a ball-headed war club with attached American scalp-locks to a meeting with the Governor General, as happened when Shingwaukonse's delegation met Lord Elgin in Montreal in July of 1849. And it is probably just as safe to say that our current Governor General has never publically referred to Indigenous people as "children," as was the common practice for centuries. These were different times, and cultural norms change. This may seem self-evident, but it bears repeating. Dr. Stark's description of Anishinaabe "law," "jurisprudence," "legal principles," and philosophies is very interesting, but it is in large part a construction of late twentieth and early twenty-first-century academics who have generated a burgeoning literature that is as sophisticated in its discourse as it is

ROBINSON HURON TREATY TRUST FUND
c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Office Tel: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

> disconnected from everyday practical realities. Even if it is partly derived from the wisdom of Elders and their oral traditions, uncritically projecting such a modern academic construct back in time for the purpose of illuminating what motivated the actions of past peoples or reconstructing what they would or might have thought or expected is problematic, for it must carry an assumption of continuity that needs to be balanced against evidence for change.

Another of Canada's Experts**, Professor Alain Beaulieu,** seeks to undermine the significance of the Treaty negotiated at Niagara in 1764, and characterizes the Indian Nations that attended the Niagara Treaty Council as supplicants fearful of British reprisal rather than nations of equals. He also downplays the significance of the Royal Proclamation of 1763 and the role it played at the Niagara Treaty Council. Professor Beaulieu's opinion is backed-up by another of Canada's experts, **Professor Paul McHugh,** who argues in his Expert report that the Royal Proclamation of 1763 has no legal effect.

Your lawyers will argue that these are the independent opinions of experts. However, their ethnocentric opinions are being tendered as evidence on behalf of your government. And, in the case of Professor Beaulieu, for example, his opinion appears to be mandated by the terms of his engagement, by the federal Department of Justice, which calls the Niagara Treaty "the so-called Treaty of Niagara." The landmark importance of this Treaty and the connection with the Royal Proclamation has been carefully set out by the Ontario Court of Appeal in the decision, *Chippewas of Sarnia Band v. Canada* (2000). The refusal of your government to accept and embrace judicial rulings such as the *Chippewas of Sarnia* case only promotes conflict rather than reconciliation.

Your letter refers to without prejudice exploratory discussions which you had previously proposed in your letter of July 22, 2016. You say that your "Government is open to constructive dialogue" and that you "look forward to the results of these discussions." It is surprising that your officials would not have reported the failed results of those "exploratory discussions". Minister Bennett, we had a meeting on December 22nd, 2016 – seven months before your letter of July 24, 2017 – and the meeting was far from a "constructive dialogue". We were certainly prepared to be constructive; but your officials were not. Indeed, on March 14th, 2017, Mr. Gary Penner of the Department of Justice wrote:

> Canada's position, as expressed at the meeting, is that it does not and will not have a mandate to enter into negotiations predicated upon the Plaintiffs' interpretation of the Robinson-Huron Treaty.

In other words, Canada's position is that if we do not accept Canada's interpretation of the treaty, then it is not prepared to enter into any negotiations. Canada was built on treaties. If Canada cannot commit to constructive engagement with respect to treaty interpretation and implementation, the goal of reconciliation is in a word, doomed.

ROBINSON HURON TREATY TRUST FUND
c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Office Tel: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

In refusing to negotiate, Canada resorts to the age-old tactic of passing the buck to the province. Mr. Penner's letter continues:

> Ontario's position, as understood from the December 22nd meeting, is that the province is willing to contemplate indexing the annuities, but to date has given no indication that it has a mandate to consider revenue sharing.
>
> Given that the Plaintiffs' mandate is limited to settling this litigation on the basis of treaty annuities interpretation and revenue-sharing, Canada believes that negotiations can only advance if Ontario has a mandate to negotiate revenue-sharing or if the Plaintiffs have a willingness to explore other settlement options. Absent this, and in light of the current limits of the Plaintiffs' mandate, there does not appear to be any basis to enter negotiations.

Canada ought to be taking the lead in bringing Ontario to the table. Instead, it is Ontario that has expressed a willingness to negotiate from the beginning. I might also say that Ontario's expert reports are not nearly as adversarial and ethnocentric as Canada's. In our view, "the Crown" owes the Robinson Huron Treaty Anishinaabek the duty to act honourably in interpreting and implementing our Treaty. This includes both Ontario and Canada, and both governments ought to decide how that responsibility should be discharged.

Canada should be taking the lead in promoting reconciliation, instead of shirking its responsibility just because Ontario refuses to negotiate on certain terms. This is consistent with the mandate letters issued to you and your cabinet colleague Justice Minister Jody Wilson-Raybould. Those letters identified the need for renewal of the relationship between Canada and Indigenous Peoples, including major adjustments to the laws, policies and operational practices applied to Indigenous Peoples. According to the mandate letters, this renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership. Moreover, Minister of Justice and the Attorney General Jody Wilson-Raybould was mandated to review Canada's litigation strategy to abandon positions that are not consistent with the Government of Canada's commitments, the *Constitution Act*, 1982 and the *UN Declaration on the Rights of Indigenous Peoples.*

Your announcement of Canada's support for the *UN Declaration on the Rights of Indigenous Peoples* at the United Nations Permanent Forum on Indigenous Issues on May 10, 2016, in New York City was clear:

> *We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution. Canada is in a unique position to move forward.*
>
> *In fact, through Section 35 of its Constitution, Canada has a robust framework for the protection of indigenous rights. Section 35 of our Constitution states, "the existing Aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed." Indigenous people, including Grand Chief John, and so many others fought*

ROBINSON HURON TREATY TRUST FUND
c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Office Tel: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

> *hard to include these rights in our Constitution.*
>
> *By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada. Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "free, prior and informed consent."*

As declared in the *R. v. Sparrow* case, the Supreme Court of Canada established that the recognition and affirmation of treaty and Aboriginal rights through section 35 of the *Constitution Act*, 1982, produced a significant transformation for Indigenous Peoples:

> … this (s.35) is not just a codification of the case law on aboriginal rights that had accumulated by 1982. Section 35 calls for a just settlement with aboriginal peoples. It renounces the old rules of the game under which the Crown established courts of law and denied those courts the authority to question sovereign claims by the Crown.

Over the past thirty plus years, the Supreme Court of Canada and other Appellate Courts have been showing some remarkable leadership in seeking to understand the aspirations, perspectives and expectations of Indigenous Peoples and in giving effect thereto through case law like *Taylor and Williams, Sparrow, Marshall, Chippewas of Sarnia, Delgamuukw, Haida, Mikisew Cree and Tsilhqot'in Nation.*

In cases like those above-noted, the Courts use language which encourages less rigidity in discussing and finding solutions for the conflict between Crown law and policy and Aboriginal and treaty rights. The less rigid approach means not seeking to explain how Aboriginal and treaty rights fit into the existing paradigms such as extinguishment, but rather, how unique these rights are and that the common and constitutional law are flexible enough to accommodate such challenges. The Court refers to it as the challenge of reconciling pre-existing Aboriginal rights and treaty rights with Crown sovereignty. The Courts have also expressed the view that Aboriginal perspectives need to be given equal weight.

A positive outlook on the Court's approach would be to describe their carefully crafted judgments as encouraging a principled approach in determining what is "justice" in the circumstances. Language in the judgments suggestive of the principled approach is reflected in Canada's recently announced Principles which speak of reconciliation, the honour of the Crown, respecting and implementing rights and the fundamental purpose of section 35 of the *Constitution Act*, 1982. In particular, Principles 5 and 9 state:

> 5. The Government of Canada recognizes that treaties, agreements and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.

ROBINSON HURON TREATY TRUST FUND
c/o Chairperson, Mike Restoule
1Miigizi Mikan
P.O Box 711
North Bay, ON P1B 8J8
rhttrust@outlook.com
Office Tel: 705.497.9127 Mobile: 705.498.7353 Fax: 705.497.9135

9. The Government of Canada recognizes that reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.

Yet, the approach of your government in the Robinson Huron Treaty litigation is the complete opposite of your government's stated intentions. And, while some disputes might benefit from judicial interventions to advance reconciliation, the adversarial and ethnocentric arguments and approach being advanced in this litigation are counter-productive.

We can only hope that your words and Canada's announcement of its Principles Respecting the Government of Canada's Relationship with Indigenous Peoples and the need for a new litigation strategy will combine to cause Canada to negotiate, rather than to litigate, a resolution of our treaty annuities claim. Only in this way can reconciliation truly be reached.

Sincerely,

Ogimaa Duke Peltier
Robinson Huron Treaty Trust Fund

Ogimaa Dean Sayers
Robinson Huron Treaty Trust Fund

cc.: Ogimaa Patsy Corbiere, Tribal Chairperson Angus Toulouse, Peter Recollet and Mike Restoule.
National Chief Perry Bellegarde, Assembly of First Nations.
The Right Honourable Justin Trudeau, Prime Minister of Canada.
The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada.
The Honourable Marc Serré, Member of Parliament, Nickel Belt, Ontario.
The Honourable Paul Lefebvre, Member of Parliament, Sudbury, Ontario.
The Honourable Carol Hughes, Member of Parliament, Algoma-Manitoulin-Kapuskasing, Ontario.
The Honourable Kathleen Wynne, Premier of Ontario.
The Honourable Yasir Naqvi, Attorney General of Ontario.
The Honourable David Zimmer, Minister of Indigenous Relations and Reconciliation.