



**NAHWEGAHBOW  
CORBIERE** GENOODMAGEJIG  
BARRISTERS & SOLICITORS

ADVOCATING FOR OUR NATIONS. FIRST.

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**PRIVILEGED AND CONFIDENTIAL**

September 8, 2023

Via Email

Garden River First Nation  
7 Shingwauk Street  
Garden River, ON P6A 6Z8

Dear Chief Rickard:

**Re: Response to Garden River's August 31, 2023, Letter**

Miigwetch for your letter, of August 31, 2023, that was emailed to me by Jauvonne Kitto. We are responding to the questions in your letter on the instructions of the Litigation Management Committee of the Robinson Huron Litigation Fund. For convenience, we repeat your questions, and our answers are immediately underneath.

1. **There is no rush, and we could use the extra time.** Why would we sign now, when Canada is not signing until November? We need that time to work out some details, and there is no urgency to sign right now.

*Answer: The decision to delay the signing is not up to the lawyers, it is up to the Chiefs and Trustees. You made this same request to the Trustees and Chiefs and Councils on August 31<sup>st</sup>, the first day of the Chief and Councils and Trustees meeting. The matter was debated by the Chiefs and Trustees, the session was recorded, and the Chiefs, Councils and their Trustees approved the Settlement Agreement, despite your disagreement, with one abstention.*

2. **\$10 Billion is good, but the way it is to be divided up is a problem.** We support the \$10 billion settlement and congratulate the negotiators on this accomplishment. The problem is that we are being asked to also lock in the 2010 Compensation Disbursement Agreement, which needs to be updated, rather than locked in.

*Answer: The decision to change the Compensation Disbursement Agreement is not up to the lawyers, it is up to the Chiefs and Trustees. The 2012 Compensation Disbursement Agreement (CDA) was unanimously approved by all 21 First Nations, including Garden River, shortly after the Trust*



*Indenture was signed in 2010. It was subject to much debate and time-consuming approvals in many of the First Nations. However, 100% agreed to the CDA.*

*Pursuant to the CDA, amendments could have been made by 60% of the Settlor First Nations. However, it was clear and recorded on September 1, 2023, that no First Nation other than Garden River First Nation wanted to amend the CDA.*

- 3. Instant millionaires in small bands.** We don't agree that small First Nations should receive the same equal share of 39% of the settlement (\$3.9 billion) as large first nations like Garden River. Section 2(a) says each of the members of those small First Nations "will be entitled to receive a per capital distribution" of this 39% share. That means that members of small FN's will become instant millionaires, but GRFN members will receive about \$50,000. This is not fair. All the beneficiaries of the treaty should be equals. The size of bands is arbitrary, determined by Indian Affairs, and should not be the basis to discriminate against members of large bands like ours.

*Answer: The answer is the same as the answer to question 2 – this is not a decision for the lawyers, it is a decision for the Chiefs and Trustees. The 2012 Compensation Disbursement Agreement (CDA) was unanimously approved by all 21 First Nations, including Garden River. This information you are providing in your letter of August 31, 2023, is not new. It was subject to much debate and time-consuming approvals in many of the First Nations in the past. However, 100% of the First Nations agreed to the CDA. Moreover, it is not clear that members of small First Nations will become instant millionaires. It will be up to each individual RHT First Nation, big or small, to decide on the issue of per capita distributions.*

*Finally, no one is dictating that Garden River citizens will only receive about \$50,000.00. It is a decision of each of the self-determining RHT First Nation to decide its per capita distributions and those decisions have yet to be announced. All First Nations are now or soon will be undertaking these discussions with the citizens in each of their communities. It is also possible that some of the smaller First Nations might give even less than \$50,000 to their citizens due to their great needs in capital and infrastructure.*

- 4. Discrimination against young people.** Clause 2(b) of the Compensation Disbursement Agreement has the words: "the amount per capita shall reflect the compensation for annuities an individual annuitant ought to have received in his or her lifetime". This is the



age discrimination clause. We don't think that young people should receive less than older people. We need a binding legal opinion about whether those words can safely be ignored, or if we are required to enforce age discrimination against young people within our own band.

*Answer: You raised this issue at the August 31<sup>st</sup> meeting of RHT Chiefs and Councils and Trustees and we answered it. The wording you make reference to is for the 1% to be set aside for annuitants that are not members of existing RHT First Nations. This section does not apply to current Garden River First Nation citizens unless your membership or citizenship code is more restrictive than Indian Affairs, then it will apply to those individuals on the Indian Affairs list, but not Garden River list. That specific reference applies to individual annuitants who are entitled to apply under the 1% of the past compensation settlement.*

*Moreover, the wording was not intended to allocate more to the elderly than children. The RHTLF will be making recommendations on how to allocate the 1% to individuals who are not citizens of our First Nations.*

*There is no imposition or requirement for any First Nation, including Garden River First Nation to allocate per capita based on age requirements. As self-determining First Nations, you will make that decision.*

- 5. One Billion Dollar Legal Slush Fund.** Clause 2(d) puts a billion dollars in the bank for future lawsuits. This represents nearly \$30,000 for each Garden River member. We think our members could use that money today, rather than investing it in future legal cases.

*Answer: The answer is the same as the answer to question 2 – this is not a decision for the lawyers, it is a decision for the Chiefs and Trustees. The 2012 Compensation Disbursement Agreement (CDA) was unanimously approved by all 21 First Nations, including Garden River. This information you are providing in your letter of August 31, 2023, is not new. It was subject to much debate and time-consuming approvals in many of the First Nations in the past. However, 100% of the First Nations agreed to the CDA.*

*The Chiefs, Councils and Trustees in 2012 knew that they might need this fund to invest in legal cases that impact all 21 First Nations, including the go-forward augmentation amount and process that may need to be determined by the court. In all the community information meetings there was*



*broad support to continue to litigate or negotiate a resolution to the go-forward augmentation amount and process. To many, we heard this was as important if not more important than past compensation.*

*As has been repeated in every First Nation community session, Justice Hennessy who was upheld by the Ontario Court of Appeal, held in law that:*

*[463] I find that the parties did not intend to limit increases to the annuities to \$4 per person. The best possible interpretation of the parties' common intention, the one that best reconciles their interests, is that the Crown promised to increase the collective annuities, without limit, in circumstances where the territory produces an amount as would enable the Government to do so without incurring loss. I find that this treaty promise, contained in both the Robinson Huron Treaty and Robinson Superior Treaty, is a treaty right protected by s. 35 of the Constitution Act, 1982.*

*[464] Further, the common intention was that the reference to £1 (equivalent of \$4) in the augmentation clause is a limit only on the amount that may be distributed to individuals, and this distributive amount is a portion of the collective lump sum annuity payable to the Chiefs and their Tribes.*

*We also argued that we are governed by First Nations and Regional Council, as set out in the decision of Justice Hennessy:*

*[23] The Anishinaabe also used the metaphor of fire to refer to councils of varying purposes, sizes, and compositions. The term "council fire" referred to a physical location where meetings were held, around which delegates sat. Council fires were ignited to host others with the aim of making decisions and agreements. According to Dr. Bohaker, Anishinaabe governance operated as a complex network of common and regional council fires (ishkode) that were hosted by an Ogimaa (Chief, leader).*

*[24] Common and regional council fires denoted different levels of governance. Common councils handled a wide range of matters, including the settlement of internal and external disputes and transactions. General or regional councils, in contrast, brought people together from a much wider region to coordinate strategies, plan for concerted action, or make alliances.*



*There is clearly a collective component to the Treaty augmentation clause and an ability to work in Regional Council like the RHTLF to the betterment and benefit of all 21 First Nations. All First Nations, including their citizens will benefit from this fund. It will be up to the Chiefs and Trustees to decide how to use this fund.*

- 6. Uncertainty about legal and negotiating costs.** The legal fees and negotiation expenses will come right off the top before anything is distributed, but we have not been told how much those expenses are. We think there should be a detailed list of those expenses right now, before we sign, so we know how much of the \$10 Billion is being used up by those costs before money is distributed to the First Nations and the members.

*Answer: Atikameksheng asked a similar question on August 31st. My answer was recorded. I said, we will not issue the contingency fees invoice until the Settlement Agreement is signed, a Judgment of the Superior Court is issued approving the Settlement Agreement and the RHTLF is in receipt of the \$10 Billion compensation. That will not happen until some time in February of 2024. I also said before we issue the invoice we will meet with the Chiefs and Trustees and get agreement on the amount. I also said the invoice will NOT BE \$500 Million.*

*The Trustees, and Chiefs and Councils were satisfied with our response at the August 31<sup>st</sup> meeting. In fact, they commended us for winning at every step in the Restoule case, including the appeals and for successfully negotiating a \$10 Billion proposed Settlement Agreement, which will be the largest in the history of claims in Canada.*

*We also answered your question about legal fees raised in your letter of August 14, 2023. Our answers to that question and the other questions posed in your August 14<sup>th</sup> letter are in our letter to you dated August 25, 2023, a copy of which is attached.*



Finally, we are glad to hear that your First Nation Council “fully and unanimously support the \$10 Billion settlement. We should accept that money from Canada and Ontario and put it in the bank.” We are happy to continue to work with Garden River First Nation and answer further questions.

Sincerely,

NAHWEGAHBOW, CORBIERE

Per: David C. Nahwegahbow, IPC, LSM, LL.B.  
[dndaystar@nncfirm.ca](mailto:dndaystar@nncfirm.ca)

CC: Chief Angus Toulouse, Sagamok Anishnawbek  
Chief Craig Nootchtai, Atikameksheng Anishinawbek  
Chief Mark McCoy, Batchewana First Nation  
Chief Gerry Duquette Jr, Dokis First Nation  
Chief M Wayne McQuabbie, Henvey Inlet First Nation  
Chief Lloyd Myke, Magnetawan First Nation  
Chief Bob Chiblow, Mississauga First Nation  
Chief Scott McLeod, Nipissing First Nation  
Deputy Chief Wilma-Lee Johnston, Serpent River First Nation  
Chief Alana Endanawas, Sheshegwaning First Nation  
Chief Adam Pawis, Shawanaga First Nation  
Chief Edward Boulrice, Thessalon First Nation  
Chief Larry Roque, Wahnapiatae First Nation  
Chief Warren Tabobondung, Wasauksing First Nation  
Chief Rodney Nahwegahbow, Whitefish River First Nation  
Chief Patsy Corbiere, Aundeck-Omni Kaning First Nation  
Chief Morgan Hare, M’Chigeeng First Nation  
Chief Elvis Mishibinijima, Sheguiandah First Nation  
Chief Irene Kells, Zhiibaahaasing First Nation  
Chief Rachel Maniwabi, Wikwemikong First Nation  
GRFN Council



## Litigation Management Committee