

Collective or individual? The key question behind distributing \$10B Robinson Huron Treaty settlement.

Money from past annuities to First Nations in northeastern Ontario to flow in coming months.

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Some members of First Nations involved in the Robinson Huron Treaty annuities case gather around a sacred fire in September. Over the coming months, band councils will distribute a \$10-billion settlement for past annuities for use of their lands, with the Ontario and federal governments paying half each. (Aya Dufour/CBC)

The 21 Robinson Huron Treaty First Nations in northeastern Ontario will soon come into serious money as band councils prepare to distribute a \$10-billion settlement for past annuities among themselves and their members.

It's akin to winning a small lottery — if you take luck out of the equation and replace it with generations of ancestors who didn't receive annual payments they were promised by the Crown in 1850 in exchange for the rights to use their lands.

A clause in the treaty tied the annual payments' value to resource revenues. Mining, lumber and fishing industries generated billions of dollars in profits over two centuries, but annual payments to First Nations were capped at \$4 per person in 1874 and haven't increased since.

In 2018, the Superior Court of Justice ruled the province had an obligation to increase the annuities. Under the \$10-billion settlement reached last year, the Ontario and Canadian governments will pay half each.

But who will receive how much and when is unclear as key decisions around what should be individual and what should be collective have yet to be made by the communities involved.

Here's an overview of what's at stake.

The compensation disbursement agreement

The 21 communities aren't starting from scratch. They rely on a compensation disbursement agreement adopted in 2012, years before the annuities case had its first date in court.

That agreement spells out how any potential settlement is to be shared among the First Nation

It can be amended with the support of 13 of the 22 Robinson Huron Treaty Litigation Fund (RHTLF) trustees, who were elected by band councils to represent their community and serve terms of five to seven years.



Duke Peltier, former chief of Wiikwemkoong First Nation, now serves on the Robinson Huron Treaty Litigation Fund (RHTLF) litigation management committee. (@DukePeltierAMKLiberal/Facebook)

Duke Peltier, a member of the RHTLF litigation management committee, said there are several proposed amendments to the agreement now that the amount is known and the distribution process has begun.

He said the \$10-billion final figure is much higher than what was anticipated when the agreement was negotiated a decade ago.

"In those days, they were talking about hundreds of millions, potentially," he said.

Changes to the distribution formula

Just last week, the 2012 distribution formula was amended.

It previously stated 25 per cent of the funds were to be shared according to the number of annuitants in a given community. Annuitants are the people currently receiving \$4 annually from the Crown.

It became obvious in the past year that there were issues with that, explained Peltier.

He said some communities — including several on Manitoulin Island — have situations where "one child receives the annuity and the other child does not, but they both have the same parents."



Leaders of the 21 First Nations meet regularly to discuss treaty-related issues, including any with the compensation distribution agreement. (Robinson Huron Treaty Litigation Fund/X)

It sometimes boils down to factors like birth and marriage paperwork, said Peltier.

"A number of [government] policies discriminated not only against females, but also children."

He added that other communities forfeited their annuity benefits in exchange for access to infrastructure like electricity in the 1960s.

Figuring out how many annuitants were in every community would have slowed the distribution process down by at least two to three years.

RHTLF trustees also voted to reduce the portion of the settlement going to the "war chest" from its original 10 per cent to five per cent. The war chest is a trust set aside to support any future litigation if there are other breaches of treaty, so the First Nations don't have to foot future legal bills upfront going forward.

Community size now bigger portion of the pie

The annuitant share and part of the war chest percentage are now included in the population-based share of the distribution formula.

This means the larger First Nations — like Garden River, Sagamok Anishnawbek, Nipissing, Batchewana and Wiikwemkoong — are set to receive more money than their smaller counterparts in Wahnapiatae, Thessalon, Zhiibaahaasing and Sheguiandah.

The money to be shared equally among all First Nations will be sent to band councils over the summer. Each community is set to receive approximately \$175 million from that first instalment.

The money based on population figures will take more time to sort out.

That's because every community has to confirm the identities of the people on their band member lists, by updating lists to remove those who are deceased and comparing band member lists with the lists from Indigenous Services Canada. It also involves coming up with some kind of consensus among the 21 First Nations about each other's population size.

Not every community has the same policy in regards to who gets to be a member — some will include non-Indigenous people who have married into the community, for example, while others won't.

One per cent of the settlement is set aside for folks who aren't affiliated with one of the 21 First Nations. That could be people who have married into other First Nations, or people who have historic or family ties to one of the Robinson Huron Treaty Anishnaabe communities.

The RHTLF leadership says it's hard to say how many people are in that boat, but early estimates suggest there's at the very least 1,000 people in the Sudbury area alone. One of the 22 RHTLF trustees represents this group.

Criticism over legal fees

The amount of money from the settlement that will be used to pay for legal and administrative fees (about \$500 million, or five per cent) has drawn criticism from some community members.

It's unclear how much of that sum will be a bonus for lawyers, as the money also covers the cost of RHTLF salaries, offices, treaty gatherings, hiring of experts for the trial and borrowing money from the bank to support a decade's worth of litigation.



The RHTLF was officially set up in the early 2010s after a working group established the First Nations had a solid case to argue before the courts. (Aya Dufour/CBC)

The annuities case still isn't over. It recently landed in [the Supreme Court of Canada](#), after it made its way through the Superior Court of Ontario and then the Court of Appeal.

What's more, lawyers accepted to be paid at a cheaper rate in exchange for a bonus if they successfully argued the case.

"The legal team has complied with their end and it's now up to the treaty beneficiaries to comply with their end of the agreement," said Peltier.

Arguments for, against keeping money aside

Once the compensation agreement is finalized and communities start receiving their money, a whole other distribution process begins.

As the annuity has been paid directly to individuals in the past few generations, some Anishinaabe in northeastern Ontario argue 100 per cent of the settlement money should be distributed on a per-capita basis, with no amount kept aside for collective purposes.

They say the annuities have not flowed through band councils before and this should be no different.

The idea of 100 per cent also influenced the outcome of some recent First Nation band elections, with some candidates vocally positioning themselves on the issue.



Wampum belts are displayed during a Robinson Huron Treaty gathering. The First Nations' intention during the signing of the 1850 treaty has been a central argument of the annuities case. (Robinson Huron Treaty Litigation Fund/X)

But Sagamok Anishnawbek Chief Angus Toulouse said the 100 per cent option does not align with what was argued in the Ontario courts, where the collective nature of the annuity was noted by both the judge and the legal defence team.

"There is a legal opinion that's been shared with the 21 communities that suggests that 100 per cent is not available to any of the 21 First Nations," he said.

"As much as people will continue to express a desire to receive 100 per cent, it's not going to happen anywhere."

He said the rise of misinformation on social media has posed a challenge for chiefs and councils.

Thinking about the future

Garden River Chief Karen Bell also recently received some backlash from community members for sharing a note explaining 100 per cent distribution is not an option.

"We cannot distribute 100 per cent because then we'll have nothing for the next seven generations," she said.

"We'll never see this kind of money coming to Garden River again, ever. Not in my lifetime anyway."



Garden River Chief Karen Bell says, 'We'll never see this kind of money coming to Garden River again, ever. Not in my lifetime anyway.' (Submitted by Robert Peace) Bell would like to communicate the benefits of investing a portion of the settlement money and using the interest to supplement incomes for years to come.

She also said the money could be used to lessen the community's dependence on federal funding, citing decisions around housing supply as an example.

Different options on the ballot

The 21 northern Ontario First Nations still have to decide what the collective and individual shares will be.

Some are eyeing a 30/70 per cent split and others are talking about 20/80, while some are inching closer to 40/60.

When it comes to the individual payments, communities also have to decide whether elders will receive a larger share, and when and how the younger members can access their portion.

Some communities will vote by way of referendum, while others will have special committees make recommendations to their chiefs and councils.