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Restoule reframes historical treaties as living agreements

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Topic and importance

The Supreme Court's decision in Restoule changes how it is possible to think about old land-sharing treaties in Canada. These treaties were not meant to be one-time transactions where land was exchanged for a fixed set of promises. They were meant to guide how Indigenous Peoples and the Crown would live together on shared territory over time.

For many decades, though, the practical benefits promised to Indigenous treaty partners were often treated as frozen in the past. The real value of treaty payments was eaten away by inflation, and treaty rights like hunting and fishing became harder to exercise as settlement and resource development expanded. Meanwhile, governments, companies, and the public benefited from new forms of resource extraction that did not exist when the treaties were signed. Restoule recognizes that treaty promises can require ongoing attention and renewal.

Main arguments

- Treaties should be understood as living relationships. A treaty is a framework for long-term co-existence. If it is treated as a complete blueprint “in perpetuity,” it becomes easier for one side to benefit from changing circumstances while the other side’s benefits stay stuck in time.

- In Restoule, the Court gave real weight to Anishinaabe principles in interpreting the treaty. The decision identifies four principles, respect, responsibility, reciprocity, and renewal, and treats them as part of what the Robinson Treaties themselves are built on.

- Anishinaabe principles help explain why the annuity promise could not be ignored for 150 years. The Robinson Treaties included an annuity clause that contemplated increases over time. The Crown had not increased the annuities since 1875. The Court rejected the idea that the Crown had complete freedom to decide whether to increase them and held that the Crown must act honourably and diligently when deciding if increases are possible.

- The challenge is what happens when other treaties do not have a clear “future review” clause. Most historical treaties were written only in English and in common law terms, and they rarely describe how disagreements will be handled or how the relationship will adapt over time. If courts start and end with the written text, that can build in a bias against Indigenous perspectives.

- A way forward is to treat historical land treaties as a legal institution with built-in obligations. The idea is that if the parties agreed to share land forever, basic ground rules must follow from that agreement, even if they are not spelled out in detail in the text. Thinking of

treaties this way allows certain principles to apply across historical treaties as a matter of logical necessity.

- Three basic implementation principles make land-sharing treaties workable over time:
    - Respect. Each treaty partner must be treated as having real authority to make commitments for its people and lands, and to be held accountable for those commitments.
    - Respect. Each treaty partner must be treated as having real authority to make commitments for its people and lands, and to be held accountable for those commitments.
    - Renewal. Because circumstances change, there must be ongoing dialogue and periodic revisiting of how treaty promises are being carried out.
    - Commensurate benefits. Implementation should not turn the treaty into a bad bargain for Indigenous partners, especially when the Crown's benefits grow over time.
- Remedies are important. Restoule pushed the parties back to the table to try to work out fair compensation, and it left room for the courts to step in if negotiations stall or go off track. That approach tries to keep the focus on negotiation, while still giving the treaty promise some real force.

Conclusion and additional considerations

Restoule shows how broader principles, including renewal, can be applied when the written text lines up with those principles. The challenge now is to carry those same underlying premises into the many historical treaties whose written terms say little about how the relationship should be revisited over time.