

Talking Points: Modernizing Treaty Annuities

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The talking points on modernizing treaty annuities are intended to provide an accessible means of conveying the key points to a general audience, with later translations into French and Cree (the largest Indigenous language group in Canada). The talking points are conveyed in six (6) themes:

1. Treaty annuity rights are an individual right;
2. Treaty annuities are intended to empower FN individuals and families within the collective;
3. Treaty annuities are intended as a livelihood support;
4. Treaty annuities are a means of sharing the land;
5. Five key reasons why treaty annuities have not been modernized since 1875;
6. Modernizing annuities today means empowering FN individuals and families.

Talking Points: Modernizing Treaty Annuities

1. Treaty annuity rights are an individual right

- a. The terms of the historical treaties are almost exclusively about collective rights, responsibilities and benefits. The exception is the treaty annuity. The annuity is an individual benefit paid directly to every eligible man, woman and child.
- b. Treaty annuities, especially those in the Numbered Treaties, are explicitly payable “to each Indian person the sum of five dollars per head yearly” [Treaty 5] or payments made to chiefs and advisers “and to every other Indian of whatever age five (5) dollars” [Treaty 10], or slight variations thereof. In some treaties, the annuity was directed to be paid to the head of a family for himself, his wife (or wives) and children. The annuity payment is the only element of the treaties that is specifically for the benefit of individuals and their families, and is not payable to the band government for use on behalf of the collective.
- c. According to a 2014 review by the Indigenous Affairs (IA) department of the treaty annuity payment program, annuities must be paid in cash directly to eligible recipients or their guardians (with the option of payment by cheque) to meet the

terms of the treaties. Most payments are collected in person at Treaty Day events in FN communities or in Treaty tents set up by IA in urban centres.

- d. IA maintains a list of eligible recipients, and departmental policy requires recipients to be both a Status (Registered) Indian and a member of a treaty band to qualify for eligibility. This was not the case under the *Indian Act* of 1876. Treaty band members who were no longer deemed wards of the state (enfranchised) or treaty women who married non-Indian men lost their Status and band membership, but explicitly retained the right to their annuity payments [Sec. 3.3c, 88]. The annuity remained payable to the treaty individual, regardless of their Status or band membership.
- e. The revised *Indian Act* of 1985 is silent on annuity payment eligibility. However, under the revised Act, bands became the sole arbiters of band membership. Thus, a treaty band council choosing to strike a person from band membership—justly or unjustly—would, at the same time, render that person ineligible for annuity payments because that person would no longer meet both of IA’s conditions for eligibility.
- f. The federal government policy decision to require band membership as a condition for annuity eligibility has served to confuse the issue of whether an annuity is an individual right or a collective right.
- g. According to IA in 2017, a treaty annuity is both an individual and a collective right. It is an individual right because it is paid to individuals as per the treaties, but it is also a collective right *because eligibility is dependent on band membership*. Neither the treaties nor the *Indian Act* impose band membership as a treaty annuity eligibility requirement. It is only an IA policy decision. Thus, the sole individual right outlined in the historic treaties is presently being conflated with collective rights.
- h. The confusion over individual versus collective rights has allowed federal government lawyers to argue that claims for annuity benefits brought by chiefs and councils on behalf of the collective are invalid because annuities are an individual right. At the same time, federal lawyers have also argued that claims brought by individuals are not valid because annuities are a collective right.
- i. The consequence is that current court claims by chiefs on behalf of the collective regarding annuity increases—and for arrears for increases that should have been made over time—are based on those moneys being payable to the collective, while individuals and families would continue to receive the nominal amounts of \$4 or \$5.

2. Treaty annuities are intended to empower FN individuals and families within the collective

- a. Treaties contained benefits for the collective, such as ammunition, fishing nets, and tools, to be distributed within the FN community. Treaty annuities paid to individuals and families empowered them to make choices for themselves about how to spend their money, independent of the collective.
- b. At the time of the signing of the historic treaties, annuity amounts of \$4 or \$5 per person were not lavish, but they were enough to provide a family with a degree of economic autonomy that allowed them a degree of social, political, and economic independence within the collective.
- c. Once FN people were settled on reserve lands and placed under the administration of the federal government, their traditional means of managing the leadership and dynamics within their community was replaced by the authoritarian control of Indian Agents employed by the Indian Affairs branch. The *Indian Act* allowed for the election of band councils, but the need for free and fair elections seemed irrelevant. IA retained the unilateral right to replace elected officials at will or appoint band councils if no elections were held.
- d. On reserves, IA held all the power, delegated downward to Indian Agents. The chief and council held little real power. However, in the 1960s, Indian Affairs policy changed from assimilation to devolution of responsibilities. Indian Agents were eliminated as band councils were given more authority to run the reserves, under the oversight of IA bureaucrats, with the objective of band councils becoming municipal-style governments operating outside the *Indian Act*.
- e. As IA devolved more power downward to band governments and band council authorities were increased, ordinary FN people became increasingly dependent on programs and services delivered by the band government. They were beholden to the source of their support, and ...

3. Treaty annuities are intended as a livelihood support

- a. As the landscape of Canada was changing in the mid-1800s due to the increase in immigration and resource development, it was becoming clear that the traditional ways of living for the first people could not be sustained.
- b. Chiefs, headmen, and advisors knew they had to ensure the well-being of their people into the future, and negotiated two key livelihood provisions in the treaties: the right to continue traditional forms of sustaining themselves and their

families (hunting, fishing, trapping, etc.), and an annuity payable to every man, woman and child and their descendants based on sharing the growing prosperity of the land.

- c. The two livelihood provisions were intended to provide individuals and families with a modest but meaningful level of on-going financial support and economic autonomy within the collective.
- d. In the mid-1800s, \$25 for a family of five people was generally sufficient to outfit a hunter for the winter and provide some additional comforts for the family.
- e. Rather than increasing the annuities as land values increased, the federal government adopted a monetary policy of nominalism for treaty annuities, so that annuities of \$4 or \$5 would retain their nominal value in perpetuity. Thus, in 2019, treaty annuities are still being paid in the amount of \$4 or \$5.
- f. The federal government did not adopt the same strict monetary policy for treaty terms benefitting the collective, which have largely all been modernized so that the benefit reflects a modern interpretation, without being limited by the specific wording of the treaties.
- g. For instance, the “medicine chest” and “pestilence and famine” clauses are written into only Treaty 6. However, the intent of providing health care and welfare support in the time of need has been modernized and expanded to all FN people, regardless of treaty status. IA provided (in 2017-18) about \$3.5-billion for FN federal health care for FN people and about \$1-billion annually in social assistance for FN communities.
- h. Unlike collective benefits, the single treaty benefit for individuals and families remains frozen in time. The annuity has long ago lost any relevance as a livelihood support or as a means of providing individuals and families with economic autonomy within the collective.

4. Treaty annuities are a means of sharing the land

- a. Chiefs, headmen, and advisors could not sell or lease their traditional lands because they did not believe anyone could own the land. However, FN leaders did understand the sharing of the land. They could foresee that the push by settlers for development—particularly mining, forestry, and other resource development—would provide shared prosperity for both settlers and the first people.
- b. The Robinson Huron and Robinson Superior treaties of 1850 contained an “escalator clause” for annuity increases (augmentation) based on the economic

prosperity from lands ceded in the treaties. This clause was triggered in 1874 by the Huron chiefs, resulting in the Canadian Parliament approving an annuity increase in 1878 for both Huron and Superior bands from 96-cents to \$4. The principle of land value-based annuity increases in the Robinson treaties was affirmed by the Supreme Court of Canada in 1895.

- c. The Numbered Treaties (1-11) signed from 1871-1921, also called for annuities but they did not contain the escalator clause language.
- d. The annuity increase for the Huron and Superior bands was the first and last land value-based increase in treaty annuities.

5. Five key reasons why treaty annuities have not been modernized since 1875

- a. **The federal government's monetary policy on annuities:** the federal government has chosen to adhere to a strict monetary policy of nominalism. The treaties stated that annuities would be \$4 or \$5 per person, and that is all the government is obligated to pay. The loss of value over time has been borne entirely by FN treaty people as the purchasing power and livelihood support value of the annuity was eroded, while saving the federal government a considerable amount of money.
- b. **The trivializing of treaty annuities as a percentage of government spending on Indigenous programs and services:** the value of the annuity in providing economic autonomy within the collective can be measured by the significance of annuities as a percentage of Indian Affairs spending on Indigenous programs and services. As the value of the annuity eroded over time, and as collective benefits were being modernized after the 1950s, the percentage of the IA budget spent on livelihood support through annuities plummeted. In 1880, about 30% of the IA branch budget was spent on annuities. By 1966-67, it had dropped to 4.0%, and by 2017-18, it accounted for little more than 0.01%. The sole treaty right for individuals and families has been overwhelmed by the benefits for the collective, and thus become largely irrelevant in Indigenous politics.
- c. **Treaty annuities are irrelevant to many FN communities:** Treaty annuities affect about three-quarters of FN people in Canada (about 570,000 people), most living in Ontario, the Prairies and the territories. Although a quarter of FN people are not eligible for annuities, non-treaty bands hold significant influence over the Assembly of First Nations (AFN), the federally-funded organization designated to speak for FN people. The AFN leadership is elected by FN chiefs, about one-third of whom represent FN communities in BC that are not involved in treaties with

annuities. Similarly, FN communities in southern Quebec and the Maritimes do not receive annuities, making annuities a non-issue for them. As well, large areas of the Arctic and northern Quebec have signed onto modern treaties, none of which include annuities.

- d. **The political “voice” for FN people advocates for collective rights:** ordinary FN people do not elect AFN leaders; they are elected by FN chiefs. The AFN is a representative organization for chiefs, and chiefs advocate for collective interests. There are no federally recognized Indigenous organizations with leaders elected by ordinary First Nations people to advocate in Ottawa for their individual rights.
- e. **The federal government banned FN communities from advocating for their rights, including treaty rights:** from 1927 to 1951, the *Indian Act* (Section 141) prohibited FN people from raising money to retain a lawyer or to retain a lawyer for the purpose of challenging federal government policy, under threat of imprisonment. By the 1950s, the treaty annuities, still fixed at \$4 or \$5, had become irrelevant as meaningful livelihood support. Impoverished FN people were provided with rations and relief payments at the discretion of Indian Agents. In the 1960s, the federal government switched to delivering funds to band governments to cover welfare payments to needy band members. There does not appear to have been any consideration given to providing livelihood support by increasing the annuities.

6. Modernizing annuities today means empowering FN individuals and families

- a. Research and consultations in 2004 by the Treaty Annuity Working Group (TAWG), a special committee of the Social Planning Council of Winnipeg, determined that the most effective and efficient method of modernizing annuities would be to link it to average land values. For instance, 5 acres of land in the Red River Valley in the 1880s would be worth \$5, whereas those same 5 acres in 2015 would be worth about \$5,000. A \$5 annuity would be modernized to \$5,000.
- b. Secondly, TAWG determined that modernizing annuities would have the most impact in dealing with on-going poverty and social dysfunction in FN populations across Canada if annuities were extended to include *all* Status FN people.
- c. Thirdly, TAWG advised that, for a modernized annuity to empower FN individuals and families, it must be paid directly to individuals and families beyond the control of the IA department and band governments, such as through the Canada Revenue Agency.

- d. The benefits of a modernized annuity would be similar to those documented by recipients of a guaranteed annual income: improved health, education, employment, and social outcomes. The added benefit would be the healing of families that are empowered by the economic strength they share. A family of five, for instance, would receive \$25,000 in annuity payments, enabling families to make choices for themselves about where and how they want to live.
- e. The economic autonomy provided by modernized annuities would allow FN women and girls, and men and boys, who are in abusive relationships to have the resources to escape. The annuity would go with them, wherever they and their children seek safety.
- f. A modernized annuity meets two of the Truth and Reconciliation Commission's Calls to Action.
- g. The most significant benefit would be to Canada as a whole. For Canadians—Indigenous and non-Indigenous—to join forces to advocate for honouring the sole individual right in the treaties by modernizing annuities would be tangible evidence of a profoundly improved relationship between Canada's Indigenous and non-Indigenous people.