



An Act to Modernize Historic Treaty Annuities

A Policy Blueprint

By Joseph Quesnel

FRONTIER CENTRE FOR PUBLIC POLICY



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Scholars have long understood that the historic treaties of Canada were intended to provide livelihood support for individual members. Treaty annuities are still kept in dollar amounts from the 19th century. Some court rulings are starting to recognize the need to “modernize” these annuities to provide that support. Modernized annuities would also go a long way towards empowering individual reserve residents. This Policy Blueprint by the Frontier Centre for Public Policy seeks to resolve this long-standing issue with a proposed law. The best avenue would be for the government to make significant policy changes or introduce a law, but in the absence of that this is a proposed private member’s public bill.

The Problem

The federal government has modernized most aspects of the historic treaties and extended those benefits to all Status First Nations people in Canada, irrespective of treaty status. The only exception is treaty annuities. For example, in Treaty 6 there is mention of a “medicine chest” and a “pestilence and famine” clause. Without any legal obligation, the federal government has interpreted these clauses to mean the provision of health care and social assistance to all Status First Nation people. It was a policy decision. The same could be done with individual annuities. Moreover, very little is contained in the Indian Act about the annuities or their distribution. This leaves much latitude on the part of the government on annuities.

Absent a legal obligation or a court ruling, the federal government has adopted a policy of strict nominalism for individual annuities. To keep costs down, the government has resisted modernizing these payments to keep pace with purchasing power or changing land values. As a result, individual annuities began to decline as a percentage of expenditures associated with Indigenous peoples, so the issue was ignored. Also, First Nations political organizations such

as the Assembly of First Nations (AFN) and band councils tend to focus on the collective to the detriment of individuals and families.

However, 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. It would also provide an important means of individual and family empowerment for First Nations.

The Solution

The federal government can make a policy change to reflect treaty annuities modernization but given its record of minimizing costs and liabilities on the government's part and absent legal mandate, it will not likely do this on its own. It would fall on an opposition party to introduce a private member's public bill to reflect a policy change from nominalism towards modernization and to obligate the government to adopt a national plan and report back to parliament on that plan within a specific time period. To further remove the issue from the hands of Indigenous Affairs/Indigenous Services and from band councils and stress the individual rights nature of the issue, the bill would authorize the Canada Revenue Agency to distribute the benefit.

As a private member's bill, the legislation cannot allocate spending of money, but it would certainly create a major policy change and require the government to determine valuation and adopt a national plan. The bill also provides flexibility to the federal government in determining a framework, which would make it more politically appealing.

An Act to Ensure the Government of Canada Modernizes Annuity Payments in the Historic Treaties

Bill Summary

This enactment requires the federal government to take all measures necessary to modernize individual annuity payments to individuals in both the historic and Numbered Treaties.

Preamble

Whereas scholars have long recognized that the treaties were intended to provide modest livelihood support for individuals and families living on First Nation reserves;

Whereas at the time of signing of treaties, a family of five was eligible for \$25, which represented a significant income for a family at the time but has now been rendered trivial for a family today.

Whereas Canada's policy of strict monetary nominalism regarding treaty annuities flies in the face of the idea that the annuities were intended to provide on-going livelihood support to treaty members;

Whereas the Indian Act is largely silent on the issue of individual annuities and their distribution, providing much latitude for the government to act on this issue;

Whereas with the broad precedent for modernization of treaty elements, the failure to modernize the single provision intended to empower individuals and families is troubling, this especially so given the issues of entrenched poverty, hopelessness, and despair facing too many First Nations individuals and families;

Whereas annuity modernization to include all First Nations people would represent a significant step in reconciliation.

Short Title

- 1 This Act may be cited as the Historic Treaties Annuities Modernization Act.

Interpretation

Aboriginal and treaty rights

- 2 (1) For greater certainty, nothing in this Act is to be construed so as to diminish or extinguish existing Aboriginal or treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in section 35 of the Constitution Act, 1982.
- 2 For greater certainty, the historic treaties refer to the Robinson Huron Treaty, the Robinson Superior Treaty, and the eleven Numbered Treaties.

Historic Treaties Annuities Modernization

Policy Declarations

- 3 The federal government shall interpret the annuities in a modern context, given the Supreme Court of Canada's admonition against reading the treaties as frozen in time. It shall move from a strict nominalist policy towards a modernization policy as it has done with all the collective treaty benefits.
- 4 The federal government shall declare that a modernized treaty annuity honours the intent of annuities included in the historic treaties.

Action Plan

- 5 The Government of Canada must, in consultation and cooperation with Indigenous peoples, develop and implement a national action plan to achieve modernization of treaty annuities for the historic treaties. This plan shall involve determining the value of an annuity based on land values or on the prosperity generated by the lands, establishing a formula for calculating a modern annuity that incorporates adjustments for inflation, and determining a fair and equitable value for a modern annuity that reflects sharing of the prosperity of the land.
- 5 (2) The Government of Canada shall determine eligibility of First Nations people across Canada to receive modernized annuity. It shall also determine the resources needed to deliver a modernized annuity; and,
- 5 (3) The Canadian Revenue Agency shall have the authority to pay annuities to all persons deemed eligible.

Report to Parliament

Annual Report to Parliament

- 6 The Ministry of Indigenous Services must, within 60 days after the first day of April of every year including and occurring between the years 2021 and 2027, submit as a report to each House of Parliament on the implementation of the measures referred to in sections 3 and 4 and the plan referred to in section 5 for the relevant period.



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