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Time to re-examine treaty annuities and the land

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The November Ontario Court of Appeal ruling that the Crown violated Robinson Treaty terms by failing to increase annuity payments highlights the necessity of understanding the link between annuities and the land as a step toward reconciliation. Because without reconciliation, Canada risks losing its soul.

However, to achieve meaningful reconciliation, we must have the courage to talk about the land — beginning with addressing the deliberately deceptive means by which Canada's government violated First Nations land agreements in aid of colonization.

Whether it is residential schools, missing and murdered Indigenous women and girls or poverty on reserves, the root cause always traces back to the land, and to the wealth derived from it.

The foundations of a relationship of solidarity and friendship between First Nations and the British were established in the Royal Proclamation of 1763. The Treaty of Niagara was signed a year later between the Crown and 2,000 First Nations chiefs.

The two treaties clearly laid out the rules and understandings by which First Nations and the Crown would work with each other. Although First Nations leaders continued to rely upon the Niagara Treaty in negotiations into the 1840s, the Crown's view of the relationship had changed.

The Crown in 1850 negotiated what appeared to be a mutually beneficial treaty with the Anishinaabe Lake Huron and Lake Superior bands. To peacefully make way for settlers to move into their traditional lands, the First Nations leaders negotiated an annuity payable to every man, woman and child in those bands to ensure their future well-being.

The treaties contained an escalator clause so the annuity would increase over time as settlers shared the growing prosperity generated by traditional lands. The Numbered Treaties (1-11) signed from 1871-1921 also contained annuities payable to individuals in perpetuity, with the understanding that they would also increase over time.

It appears that the Crown had no intention of doing so, as no mechanism for increasing annuities was ever developed. Instead, the federal government adopted a strict policy of monetary nominalism to forever freeze annuities at the 1878 value of $5 per person ($4 in Ontario) per year.

That’s 42 cents per month. That is the “return on investment” Treaty people receive today for sharing their traditional lands with settlers.

In 2014, the leaders of the Huron and Superior bands did finally challenge Canada’s failure to increase annuities. The Ontario Superior Court ruled in Restoule v. Canada in 2018 that the government was obliged to do so, affirmed by the Ontario Court of Appeal ruling.

But without any historic mechanism in place, how might one evaluate the “prosperity generated by the land” in modern-day Canada?

Our Indigenous and non-Indigenous grassroots team, the Modernized Annuity Working Group (MAWG) arrived at a number of viable models that are easy to understand and relatively simple to implement.

The federal income support model, for instance, uses the same process for establishing the value of programs such as the Canada Child Benefit (about $570 per month) or Old Age Security (about $635 per month). To arrive at a dollar value, the federal government determines the objective of the program, what it would cost to achieve that objective, and what is politically acceptable to the electorate. We arrived at a suggested monthly annuity value of $625 per person.

A GDP land-based model, on the other hand, is significantly more elaborate in that it encompasses land-based economic activity in Canada, from farming, forestry, fishing, mining and energy production to golf courses and national parks.

Canada uses the internationally recognized North American Industrial Classification System to provide a detailed record of economic activity in all sectors of the economy, published quarterly by Statistics Canada. Based on the GDP data published for October 2021, the land-based economic activity we looked at would result in an annuity value of $735 per person per month.

Of course, challenges exist in implementing a modern annuity, including eligibility. Our team sees great value in extending a modern annuity, payable directly to each status First Nations person. This could dramatically alter the economic prospects of First Nations families and communities.

There is little to stand in the way of modernizing annuities today. The Indian Act has nothing to say on annuity valuation. All that is required is the political will to act.

This is what meaningful reconciliation could look like if we all pull together in this boat called Canada.

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