

first facts #3: 5 reasons why Treaty annuities have not increased for nearly 150 years

1. Canada's federal government considers Treaties between First Nations and the Crown as historical legal documents that are not subject to change.

According to Indigenous Services and Crown-Indigenous Relations (formerly Indigenous Affairs), Treaty annuities are paid on an annual basis in accordance with the terms of those treaties that contain annuity provisions. It is Canada's official position that the annual payment of \$4 or \$5 meets the annuity obligation set out in the treaty text.

2. Canada's federal government adopted a policy of strict monetary nominalism for Treaty annuities, which means \$5 is \$5 forever, regardless of inflation or erosion of buying power.

Monetary nominalism is a legal interpretation that means a \$5 amount stated in a contract has a nominal value of \$5 ever after. Because the Numbered Treaties (1-11) did not explicitly state that annuities would increase, the value of the annuity remains fixed. The Robinson Treaties of 1850 did contain an explicit escalator clause, but annuities were not increased for them either. Over 150 years, the federal policy of nominalism has transferred the entire cost of inflation and the erosion of buying power of the annuities to Treaty families.

3. Under the Indian Act of 1876, the Indian Affairs branch controlled all aspects of life on reserves, making it easy to suppress challenges to government policy.

The Indian Act is a legislative vehicle for administering the terms of the various treaties signed between the Crown and First Nations. However, the Act does not provide any

mechanism for First Nations people to challenge unilateral government policies affecting their lives. The power structure for Indian Affairs was (and is) entirely top-down, which means people challenging government policy have long faced the risk of direct or indirect retribution.

4. From 1927 until 1951, the Indian Act effectively criminalized the organization and funding of First Nations political or advocacy groups.

As First Nations leaders became more vocal, the federal government amended the Indian Act in 1927 to make it a crime to solicit funding to hire lawyers to challenge government policy, without getting a permit from Indian Affairs. That made it nearly impossible for First Nations to fight for their rights through the legal system.

5. The annuity of \$4 or \$5 is the only provision in the Robinson and Numbered Treaties intended for the benefit of individuals and their families, but only benefits for the collective have been modernized.

First Nations leaders fighting to modernize Treaty terms over the past 50 years have focussed almost exclusively on large-scale collective benefits such as health care, education and social assistance. Annuities remain frozen in the past. In 2018, the Ontario Superior Court of Justice ruled that the Robinson Treaty annuities should have been increased based on the escalator clause. However, focus appears to be on arriving at a substantial settlement for the benefit of the collective, with little attention to modernizing individual annuities.