A Modern Annuity for Canada — Concrete Reconciliation

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ABSTRACT

Canada's history features many commercial compacts, agreements, and treaties marking the evolution of the relations between Indigenous Peoples and Settlers. The treaties negotiated between 1850 and 1921 comprised three main elements: the allocation of land for the exclusive use of the signatory First Nations; preservation of hunting and fishing rights; and an individual annuity paid to each band member, plus a one-time payment made to the band. The individual annuity was minimal, even in the later 19th century, and has remained unchanged since 1878. This paper explores the rationale, design, implementation, and cost of a Modern Annuity as the concrete measure for reconciliation, acknowledging the value of the land ceded to Canada by the Indigenous peoples.

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INTRODUCTION

The treaties negotiated between 1850 and 1921 comprised three main elements: the allocation of land for the exclusive use of the signatory First Nations; preservation of hunting and fishing rights; compensation in the form of a one-time lump sum payment to the band, various benefits such as tools and equipment for the collective, and an individual annuity paid to each band member.

Increasing the individual annuity and creating an escalator process acknowledges the large increases in the value of the land ceded by Indigenous peoples of Canada. Concomitantly, it will also offer direct and substantial income support that addresses the economic gaps between First Nations people and Settler populations.

This paper discusses the Modern Annuity in the following four sections:

- An overview of the rationale for a Modern Annuity
- Clarifying the historical/legal foundations for annuities
- Setting the design and value for the Modern Annuity
- Estimating the financial impact on First Nations families and Canada's finances.

THE RATIONALE FOR A MODERN ANNUITY

The earliest treaties between Europeans and Aboriginal peoples focused on ensuring no hostilities occurred between the settlers and facilitating trade. With the so-called Numbered Treaties (also known as the historic treaties), the practice started by the Robinson-Huron Treaties of paying an annuity become standard practice. This section briefly reviews the annuities in the historic treaties, followed by a more in-depth discussion in the next section.

The early Numbered Treaties, 1 and 2, offered modest compensation in the form of an annuity of $3 (annually) and created a set aside for reserve land of 160 acres per family of five in exchange for the land. These treaties did not specify hunting or fishing rights. These two treaties may have reflected the expectation that First Nations peoples would continue to live off the land; signatories to the agreements may also not have appreciated the full dimensions of the wealth Canada would eventually produce in the twentieth century, or how valuable the ceded land would become.

Treaty 3, covering the land between present-day Thunder Bay and eastern Manitoba, reflected the certainty that this area would include the route for the national railway. All parties understood the value of this area, which resulted in a higher annuity ($5), a one-time payment of $12, an allocation of $1200 to the band for buying ammunition and twine, and a much larger land allotment per family. Other numbered treaties varied the individual annuity, one-time payment, compensation to the community for hunting supplies, and land allocation per family of five. For example, Treaty 6 added a medicine chest (medical and health supplies), financial assistance during times of famine, and an annual payment of $1000 for three years to treaty signatories (chiefs) to support cultivation.

The evolving language of the numbered treaties leaves many questions. Were these treaties intended to serve as enduring contracts between the governments representing Settlers and the First Nations where annual payment was in exchange for land? Or were they an extension of health and social services (Treaty 6) and a form of social safety net specifically for First Nations? And what about modern treaties that assign to First Nations some sover-

eignty over land and resources, but offer no individual compensation? Can any of these agreements serve as the starting point for a Modern Annuity?

As an aside, the comprehensive land claims and self-government agreements initiated after the Supreme Court of Canada decision (Supreme Court of Canada, 1973) attempt to redefine the relationship between Indigenous communities and provincial/federal governments (Ash & Zlotkin, 1997). These agreements, so far concluded with about 100 Indigenous communities, have transferred large land areas from the Crown to First Nations, provided over $3.4 billion in capital, committed to the preservation of traditional ways of life, created the basis for joint decision-making on land and resource management, and increased certainty on land use for 40% of Canada (Canada, 2008). These accords do not specify payments to individuals, analogous to the historic treaties, and it is the Numbered Treaties that offer the basis for the Modern Annuity in 2020.

A working assumption of this paper is that the parties entered into treaties with the understanding that in addition to livelihood support, compensation was for land ceded and that the annuity served as perpetual payment for the rights of Settlers to use Indigenous lands. Another conceptual foundation for the Modern Annuity is that both parties to the historic treaties fully understood the value of the lands transferred, but the pace and weight of European settlement tilted the negotiations heavily in favour of the government. Also, the Aboriginal leadership understood the treaties as subject to periodic negotiation, creating a basis for escalation in annuities (Anderson, 2010). Finally, we also believe that the concept of payment for land applies to all First Nations persons, whether covered by an historic treaty, a modern treaty, or no treaty at all, and whether living within a First Nations community or not.

At this stage, we apply the Modern Annuity solely to members of First Nations. The comprehensive agreements creating Nunavut cover the Inuit, and the Métis are negotiating a separate compensation package. Also, it is reasonable to take the view that the Modern Annuity should occur within the framework of comprehensive treaty renewal, but consideration of that critically important idea requires a separate treatment and is beyond the scope of this paper.

As context, individual annuity payments comprise an extremely small amount of the annual expenditure by the federal government on the delivery of programs and services to Canada's Indigenous people, most of whom (close to 1-million) are Status First Nations people. In 2017–18, annuities amounted to about $2.7-million for some 582,000 eligible Status Treaty people (Jones, 2019).

Just what is the historical and legal basis for annuity payments? Were they intended solely as livelihood support, or were they intended as perpetual payments for sharing the land?

THE HISTORICAL/LEGAL FOUNDATION FOR THE MODERN ANNUITY

> "Treaties between Indigenous nations and the Crown established the legal and constitutional foundation of [Canada]" (Canada, 2015).

Britain and France completed many commercial agreements with individual First Nations (FN) starting as early as 1701 (Miller, 2009). The Royal Proclamation of 1763 declared all lands in North America as having Aboriginal title and obliged the British Crown

to buy First Nations land to acquire title before making it accessible to European settlement (Hall, Albers & McIntosh, 2020). The British Crown continued to make piecemeal agreements until the War of 1812 (and the Treaty of Ghent in 1815), and thereafter, with the assumption of peace that no longer required Aboriginal military alliances, urged negotiators to reduce costs (Leslie & Baldwin, 2006) both up-front and on-going. Annuities to individuals offered an effective method of "amortizing" land acquisition costs into the future (Anderson, 2010).

The first individual annuities were introduced in Treaty 20 — the Rice Lake Purchase — signed in 1818 between the Crown and the Mississauga bands in south-central Ontario (Surtees, 1986). Only Treaty band members alive at the time of signing received the annual payment of $10 for every man, woman, and child, with payments ceasing upon death.

In 1850 Anishinaabe leaders negotiating the Robinson Huron and Robinson Superior treaties knew the Crown was under pressure to open territory for colonial development, and they recognized the potential natural resource wealth of their lands. They initially proposed individual annuities of $30, $60, or $100 (Vidal & Anderson, 1850), based on the higher annuities paid in the USA. Constrained by the need to control costs and aware that American annuities ended after 20 years, Crown negotiator William Robinson offered instead a lower annuity, but "in perpetuity" (Krasowski, 2011; 2019). When that wasn't enough, Robinson added an "escalator clause" (or augmentation clause) whereby the annuity would start off small, but would increase over time as the value of the ceded lands — and the benefits produced by that land — increased due to development and settlement (Ontario, 2018).

The final Robinson Treaty texts included two key livelihood support provisions:

- the "full and free privilege" to continue to hunt, fish, trap, and pursue traditional occupations on ceded lands, and
- an annuity for every man, woman, and child, in perpetuity, which "shall at any future period produce an amount which will enable the Government of this Province without incurring loss to increase the annuity ... provided that the amount paid to each individual shall not exceed the sum of one pound provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order" (Canada, 2013a).

The Treaties were viewed by the Crown as "about land surrenders (i.e., surrender of aboriginal title in the land), compensation to permit peaceful white settlement, and the means (reserves, assistance, education, and so forth — all as grants from the Queen's bounty) to ensure that Indians had the opportunity to adapt, transform, and thrive in the new circumstances" (Hall, 2015).

However, the question of "surrender of aboriginal title" remains a contested legal question (McNeil, 1997). For example, the *Grassy Narrows First Nations v. Ontario*, 2014 SCC 48, focused on whether the Province of Ontario, which was not a party to Treaty 3, had the authority to issue logging permits on Treaty 3 land. The judge upheld the Anishinaabe understanding that they had not surrendered their land, but rather agreed to share the resources of that land. On appeal, the Ontario Court of Appeal reversed the decision, awarding Ontario the authority to issue logging permits, but it did not expressly overturn the finding that both parties to Treaty 3 understood they would share the use and benefits of the land (Gunn, 2018). "The Elders stated that the white men can never repay or ever pay in full the cost of these lands. Finally, people agreed to lend it out. Land was never sold" (Gunn,

2018). In other words, the annuities and other provisions of the treaty formed the basis of a leasehold payment.

Craft (2013) offers a clear argument that Cree and Saulteaux Chiefs agreed to share reserve lands with the settlers, provided annuity payments continued. This suggests the annuities formed a leasehold payment. The notion that the annuity represents a leasehold has collateral support in the idea that First Nations share in royalties flowing from mineral and other land-based resources. Finally, the negotiation of comprehensive land claims and self-government agreements, as well as the Treaty Land Entitlement process, has extended property rights to Indigenous peoples. The fact remains that many, if not most, members of First Nations, specifically those on unceded lands, have not benefited from such an extension of property rights.

The issue of "sharing the benefits of the land" became an important element of the 1850 Robinson Huron and Robinson Superior treaties. In the early 1880s the Crown sought to encourage Indigenous people to cease traditional ways of life and, it recognized that FN families would need another source of income as settlement displaced their traditional forms of livelihood (Surtees, 1983; Venne, 1997). In this historical context, annuities served as both a livelihood support and compensation for the land.

After 1850 the increasing populations in the Huron and Superior bands meant division of the lump-sum annuity payment among more people. By 1874 the annuity had shrunk significantly. That year, the band Chiefs triggered the escalator clause, demanding an increase in the individual annuity based on booming mining developments. Without consultation with the Anishinaabe leaders, in 1878 the Parliament of Canada approved an increase from 96 cents to $4.00 per person (Canada, 1878). It was the last time Canada increased individual annuities.

While the Hudson's Bay Company's practice of establishing treaties with First Nations bands, dating back to 1682 (Ray, 1990), set a precedent for the eleven Numbered Treaties west of Fort William, so did the Robinson treaties. By formalizing the granting of reserves, annuities, and the right to hunt and fish on unoccupied Crown lands, they became "an ideal template" for the Numbered Treaties (Krasowski, 2019; Canada, 2013b). The Numbered Treaties, signed between 1871 and 1921, included the livelihood provisions of the Robinson treaties, and an individual annuity payment of $4.00 or $5.00 (depending on the treaty). In 1870, the $20 or $25 in annuities for a family of five was enough for outfitting a hunter for the season (Ray, 1990). While the Numbered Treaties did not contain the Robinson "escalator clause" language, it was clear that First Nations negotiators were also seeking "economic benefits and security" (Gunn, 2018), and perpetual annuities were an important element of family security.

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. Over the past 150 years, that policy has transferred the entire cost of inflation and the erosion of buying power of the annuities to Treaty families (Metcs, 2008).

At the time of the Numbered Treaty negotiations, only the Crown and Treaty commissioners could realistically have understood the concept of inflation, if it was considered at all (Metcs, 2008). Consider that "the Crown maintained a consistent position throughout the treaty-making era that the Queen's representatives would assure the sustained livelihood of the First Nations" (Ray, 1990), and that "Indian livelihood was to be secured or enhanced by a treaty relationship, rather than diminished or encroached upon by it" (Metcs, 2008; Supreme Court of Canada, 1999). Beginning in 2009, some FN bands that signed on to the

Numbered Treaties did claim that their annuities should have increased, leading to a series of unsuccessful attempts to certify class-action lawsuits to claim arrears.[1]

No mechanism or formula was set out in the Huron and Superior treaties, none was established in 1874 when the escalation clause was first triggered, and there is still no mechanism for establishing how to value a Modern Annuity (Chute, 2009; Jones, 2018). In 2014, the Huron and Superior leaders seeking an increase in annuities filed a statement of claim against Ontario and Canada. The Ontario Superior Court of Justice ruled in December 2018 that "the Crown has a mandatory and reviewable obligation to increase the Treaties' annuities when the economic circumstances warrant". However, the case did not address the mechanics of valuing an increased annuity (Ontario, 2018).

Annual gift giving has a deep history in First Nations cultures. The individual perpetual annuities of $4 or $5 (plus $25 and $15 for chiefs and headmen) were powerful incentives to sign Treaties, particularly as a means of ensuring the future well-being of band members. The annual payment (Treaty Days) was, and continues to be, an affirmation of the promises made by the Crown for Treaty people, even if the loss in value of the annuity has rendered it largely symbolic.

According to FN leader Harold Cardinal, "The livelihood arrangements of treaty must be the basis for bringing back on track the treaty relationship, which seemed to have become lost somewhere in the entrails of colonial history" (Cardinal & Hildebrandt, 2002). From one view, modernizing the annuities honours the intent of the original annuity clauses in the numbered treaties as a means of livelihood support and a payment for sharing the land,

SETTING THE DESIGN AND VALUE FOR THE MODERN ANNUITY

Having briefly sketched the historical, constitutional, and legal foundation for the Modern Annuity, this section considers its design and implementation by first discussing several principles.

Principles of the Modern Annuity

First, reviewing the annuities specified in various treaties demonstrates the evolution of the concept, from the earliest treaties that specified annuities and the value, to more agreements that increased the obligations of Canada beyond the basic cash to the transfer to provision of health and other services.

First Nations persons of Canada live in three locales — historic treaty land, comprehensive agreement land, and unceded territories. The historic treaties, specifically the Numbered Treaties signed between 1871 and 1921, contained explicit annuity amounts of $4 or $5. Modern treaties, signed since 1975, contain no mention of any form of annuity and seek, rather, to extend the rights of First Nations over land management as the basis for increased Indigenous prosperity.

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[1] Annuity-based cases include *Soldier v. Canada (Attorney General)*, [2009] 2 CNLR 362 (Manitoba Court of Appeal); *Horseman v Canada*, 2015 FC 1149 (Proposed Class Proceeding); *Beardy's & Okemasis Band #96 and #97 v Crown*, Special Claims Tribunal Canada, File No. SCT-5001-11, May 6, 2015; Horse Lake First Nation annuity claim denied, Special Claims Tribunal, December 7, 2011.

The annuities derive from historic treaties. Geographically, the Numbered Treaties cover all the Prairie provinces and into the Yukon and Northwest Territories. Aside from the Douglas Treaties in BC and the Robinson Treaties in Ontario, the rest of Canada is unceded land. Based on data from Indigenous Services Canada in 2018, almost 60% of Canada's First Nations population would receive an annuity, leaving 40% who would not receive any benefit from an historic treaty.[2] Neither First Nations leadership nor the government of Canada would support modern annuities restricted to members of First Nations that are signatories of an historic treaty.

A second challenge is developing a 21st-century foundation for the compensation of the massive land transfers involved. The history of treaty-making between Europeans and First Nations dates back to 1701, with the Treaties of Peace and Neutrality negotiated between the First Nations peoples and both France and England. For this paper, the relevant treaties are the eleven Numbered Treaties negotiated between 1871 and 1921. These treaties reflected specific circumstances of time and place. While it may seem logical to simply base the Modern Annuity on payments established in these historical agreements, adjusted for inflation, this section outlines several important impediments to this approach and offers an alternate starting point.

Third, it is important to specify the parameters for such a regular payment. The current tradition of Treaty Days, where Canada's federal government presents a cash amount to each Registered Treaty Indian, can be very symbolic, signifying and solidifying the legal relationship between Canada and a First Nation expressed in the treaties. These are important social events, attracting band members from some distance to re-establish and reaffirm communal bonds. However, the amounts contemplated in this paper are quite large, costing the federal government as much as $9 billion by 2030 — this level of expenditure requires clear guidelines for eligibility, distribution, and accountability.

Finally, a much more substantial annuity, especially coupled with the Canada Child Benefit, the OAS supplement, and other income-conditioned payments, promises to dramatically increase the incomes of First Nations peoples. This section briefly considers the potential impacts of a Modern Annuity on the families and the federal budget.

Calculation of the Modern Annuity

Calculating the Modern Annuity requires two steps. First, one must set the starting amount. Second, the annuity increments require explicit rules. The amounts offered in 1871 are laughably low in 2020, and any annuity offered now may be just as outdated in 2100 without an escalator clause.

Three possible approaches to calculating a starting point for a Modern Annuity are available:

1. Adjusting historical amounts for inflation to a current equivalency;
2. Using some share of national wealth on a proportionate per-capita basis;
3. Setting an administrative norm based on a rule subject to policy review.

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[2] Indigenous Services Canada reports 970,562 Registered Indians in 2016, of whom 52% live on reserve and 48% off reserve. About 275,000 (about 28%) were children aged 0–17.

Adjusting Historical Amounts for Inflation

Adopting this approach requires the assumption that the original annuities in the Numbered Treaties reflected a fair value for the ceded land. No basis exists for making such an assumption; but for the moment assume that the annuity amounts and land allocations were correct, how might inflation adjustment work?

Assume the amount of $5 for the annuity, and let's go back 100 years to 1920. Between 1920 and 2020, general prices increased by a factor of 14.2 (Statistics Canada, 2019a), implying that the present day annuity, if adjusted for inflation, should be $71. This is still neither a *quid pro quo* for the land exchange nor an amount that contributes to individual Indigenous prosperity.

Another approach to adjusting historical compensation might be to imagine that the land allocation per family could serve as the base for calculating a Modern Annuity at the individual level. This assumes that individual families received title to the land allocation, when in fact it merely served as a way to set the size of reserves.

However, imagine that the annuity for an individual used a prorated share of the land allocation. Using 160 acres, the allocation per family of five in Treaty 1, suggests an individual allotment of 32 acres. Now, the challenge is to set a current value of land in Canada. For the moment, assume that farmland values are an appropriate standard, since many reserves were purposely located in rural areas. According to Farm Credit Canada, 2018 farmland values ranged from $1600/acre in many parts of Atlantic Canada and $5,010/acre in Southern Manitoba to well over $100,000 per acre in the Okanagan wine country (Farm Credit Canada, 2018). The capital value of 32 acres ranges from $51,200 to over $3.2-million. One can generate an annuity amount by applying the interest rate for a secure investment, such as 3%, which produces annuities ranging from $1,536 to $96,000. Growing urban populations have enveloped some Indigenous communities (Tsawwassen and Musqueam, for example), even if they were never signatories to historic treaties. Including urban land values in the calculation would produce even higher and more disparate annuities, given land-values in areas such as Montreal, Toronto, or Vancouver.

Whether using historic annuities and revaluing them to match today's monetary value, or imagining that a land allocation formula originally used to set the size of reserves could be reinvented to serve as a standard for an annual payment to the individual, neither offers viable foundation for creating a Modern Annuity.

Using Some Share of National Wealth on Proportionate Per-Capita Basis

Another possible basis for the starting value of an annuity in 2020 is to find a measure of national wealth, and then calculate a per-capita share. If the annuity remains rooted in the concept of an annual payment to reflect the value of the land explicit in the treaties and implicit in the unceded territories, one approach might be to use, as the basis for land wealth, the Gross Domestic Product arising from land-based activities, comprising agriculture, forestry, fisheries, and hunting plus mining, quarrying, and gas extraction — the first two categories in Table 1 (Statistics Canada, 2019b).

In 2019, Canada had 859,000 Registered Indians (Statistics Canada, 2021), which formed about 2.3% of the population. The total value of the land-based activities is 9.8% of GDP or $19 billion. The "share" of each Canadian is simply this sum divided by the popula-

TABLE 1
Gross Domestic Product (GDP) at Basic Prices, by Industry
(Millions of dollars)

	Dollars	Percent
Agriculture, forestry, fishing, and hunting	40,091	2.06
Mining, quarrying, and oil and gas extraction	150,755	7.74
Utilities	44,060	2.26
Construction	138,464	7.11
Manufacturing	201,682	10.36
Wholesale trade	99,374	5.10
Retail trade	101,706	5.22
Transportation and warehousing	88,147	4.53
Information and cultural industries	62,947	3.23
Finance and insurance	129,195	6.63
Real estate and rental and leasing	246,343	12.65
Professional, scientific, and technical services	114,835	5.90
Administrative and support, waste management and remediation services	52,358	2.69
Educational services	102,811	5.28
Health care and social assistance	137,175	7.04
Arts, entertainment, and recreation	15,231	0.78
Accommodation and food services	44,032	2.26
Other services (except public administration)	37,634	1.93
Public administration	131,729	6.76
All industries	1,947,407	

Source: Statistics Canada, Gross domestic product (GDP) at basic prices, by industry, Table 36-10-0434-02

tion of 37.6 million, or $2,238 annually, which represents a sizable increase from the $5 in Treaty 1.

However, what is the rationale for confining the valuation of Indigenous lands to the first two categories? The largest industrial category of GDP is "Real estate, rental and leasing", which surely is land-based. In fact, one could argue that almost all elements of GDP have some connection to the land.

But a deeper issue exists. GDP rests on much more than land or natural resources. Capital, especially human capital, and knowledge, as well innovation, have played increasingly important roles in the wealth of our nation. Further, since Confederation in 1867, our economy has transitioned from agrarian to manufacturing, and then to services. So, while land is an important element in Canada's wealth, its role has diminished and intertwines with human capital, innovation, and technology.

Administrative Norm Based on a Rule Subject to Policy Review

It appears that little prospect exists for identifying a natural basis for a Modern Annuity. One option is to link the payment to a current administrative number, such as some fraction of the current basic federal tax exemption of $12,585. An alternative could be the

maximum Tax-Free Savings Account contribution ($6,000) or the maximum benefit under the Canada Child Benefit ($6,400).

Any of these numbers is completely arbitrary; governments set these as a matter of policy rooted in some assessment of what might be politically acceptable, what is affordable, and what might serve as a meaningful measure of support. This is exactly how annuities within the various treaties were determined, as the negotiations for Robinson-Superior and *Robinson-Huron Treaties (1850) illustrate.*

In the 1840s, the Anishinaabe leaders petitioned the Government of Upper Canada to receive compensation for land involuntarily ceded to mining companies (Canada, 2013a). Some First Nations accepted the initial offer of a one-time payment of £4000 and an annual payment of £1000 (paid to the band leadership), with others requesting an individual annuity of £10 and a large reserve tract. The negotiator for Upper Canada refused, since the government had set a budget for the entire set of treaties to stabilize control of the lands north of Lakes Huron and Superior.

The point is that the treaties were subject to negotiation, conditioned by politically set budget constraints. Little reason exists to think that a Modern Annuity can be otherwise. This leaves two approaches for arriving at a value. One can set an individual per person amount, calculate the total cost, and assess whether that number is politically acceptable. An alternative is to determine a total budget and then divide by the number of eligible recipients.

Based on all the estimates just discussed, this paper proceeds with a provisional value of the Modern Annuity at $7,500 per eligible recipient. This number is sufficiently large to support the analysis of the fiscal implications for the national budget and the impact on families. It is also in the "ballpark" for what many families with children would receive from Canada Child Benefit. The next issues requiring resolution are escalation and implementation of the modern annuity.

Escalation

To review, the annuity serves multiple purposes, including the means of compensation for access to traditional lands and for sharing the prosperity generated by development/settlement of that land. If sharing the land means anything in a modern sense, it means sharing the wealth of the land, which requires escalation. As discussed above, the courts have validated escalation of the annuity.

One obvious process for adjusting the Modern Annuity is to apply an annual cost-of-living adjustment. But this measures only the cost of consumer goods or the goods in the basket tracked by the survey of consumer finances (Statistics Canada, 2014).

We suggest that the GDP implicit price deflator tracks the changing wealth of Canada, and more closely aligns with the concepts underlying the Modern Annuity (Statistics Canada, 2018). This escalation adjustment also has less variability than cost-of-living indexes.

Setting Parameters for Annuity Delivery

The idea of a Modern Annuity rests on the idea that each Registered Indian in Canada should receive an annual payment in recognition of the land ceded by First Nations peoples, regardless of whether the recipient is part of an historic or modern treaty. This would be

payable by the Government of Canada on behalf of the Settler community. The key parameters of the proposed Modern Annuity include:

1. All Registered Indians should receive this payment (payable either in an annual lump sum or monthly) starting at the age of 18 and extending to death. It is a payment to the individual and purposely bypasses First Nations governments. Registered Indians under the age of 18 are currently eligible for an annuity under historic treaties, but stacking Modern Annuity on top of the Canada Child Benefit may not be politically or fiscally feasible.

2. The payment cannot be reassigned or redirected unless legally mandated (such as payment for child support, public trustee appointed by the court, or some other judgment). No one can receive the payment or a portion of the payment on behalf of any other eligible recipient unless court directed. This ensures proper targeting of recipients unless they are incapacitated or fail to meet certain legal obligations, such as non-payment of court ordered child support.

3. The Modern Annuity is a payment from Canada (Employment and Social Development Canada (ESDC)) directly to the individual First Nations member. This is to insulate it from any other benefits received from other federal departments, such as Indigenous Services Canada or Crown-Indigenous Relations and Northern Affairs Canada). ESDC also manages the Canada Child Benefit, based on eligibility determined by Canada Revenue Agency (CRA).

4. The payment is non-taxable, but enters the calculation of net family income for other supports, such as the CCB and income assistance.

5. The Modern Annuity involves a substantial cash transfer. As with any contract, both parties have rights and obligations to ensure the integrity of the program. Recipients have three obligations:

   (a) *File an annual income tax return.* Even though the Modern Annuity is tax-free, it affects the calculation of income-conditioned benefits, such as the CCB, income assistance, and the Guaranteed Income Supplement. The income tax return forms the basis of calculating net family income for many other programs.
   Filing a tax return will also create the information to evaluate the impact of the Modern Annuity on recipient families, immediately and in the longer term. Does it mitigate poverty? Does it support increased training and entrepreneurship? Does it encourage migration to larger centres? What is the coverage; specifically, what percentage of eligible recipients receive the benefit? Answering these questions is part of accountability, improved targeting, and validating the intent of the policy.

   (b) *Have a deposit account with a federally or provincially chartered financial institution.* Recipients of most income security programs receive their benefits using direct deposit. Using a properly chartered financial institution ensures the recipient has legal control over the annuity and can access professional advice in the management of their money. The emergence of on-line banking

means that residents in remote communities without physical bank/credit union branches will be able to meet this standard.

(c) *Ensure their registry is current.* The Modern Annuity must remain focused on Registered Indians. This ensures that only eligible First Nations persons receive the benefit.

FINANCIAL IMPACT ON FAMILIES AND THE FEDERAL BUDGET

This section briefly reviews the impact of the Modern Annuity for families in different economic circumstances and the potential cost to Canada.

Impacts on Families

The Modern Annuity promises to increase the incomes of individuals and families substantially. Examples of the impact of the Modern Annuity on specific family types appear in the Appendix, which shows how the Modern Annuity affects the incomes of various family types, much as a federal or provincial budget might illustrate the impact of a tax or social safety net program. The scenarios assume the families are situated in Winnipeg, Manitoba, and would be eligible for social assistance under the Employment and Income Assistance program. Since some 40% of Registered Indians reside in urban areas, it is helpful to use an urban location to understand how a Modern Annuity interacts with social assistance, the Canada Child Benefit, and the GST/HST rebate.

To support comparison among family types at different incomes, the scenarios make several assumptions:

- We propose that a Modern Annuity be non-taxable (federally or provincially), but be included with earnings for the purpose of calculating social assistance, Canada Child Benefit (CCB), and GST rebate. Even were the Modern Annuity taxable, including taxation in the analysis would considerably complicate the discussion since the taxation of Indigenous incomes occurs within its own unique framework.
- The calculation of the CCB assumes no adjustments due to the Universal Child Care Benefit or the Registered Disability Savings Plans.
- The scenarios do not include provincial child benefits; and finally,
- The estimates do not reflect the adjustments and in-kind benefits available to those on social assistance such as supplementary health, transit passes, training allowances, child care while taking training, and the housing support programs.

In general, the scenarios show that all families would receive a substantial income boost from the Modern Annuity, especially the social assistance programs that do not include this as earned income. A key policy decision is whether social assistance programs should include this payment as earnings. Social assistance programs impose an "earnings adjustment" that reduces the payments, reflecting changes introduced two decades ago as a result of welfare reform.

By way of explanation, prior to "Welfare Reform" social assistance programs throughout North America penalized work (Béland & Daigneault, 2015). A dollar earned triggered a dollar reduction in social assistance, effectively creating a 100% tax rate on employment income. Welfare reform resulted in programs reducing the taxation on earnings. In Manitoba, social assistance recipients can keep the first $200 dollars earned each month, with 70% of any amount above applied directly against the social assistance payments for that month. Depending on the household composition, at some, quite modest level of earnings, social assistance payments fall to $0. The result is that the Modern Annuity may have only a modest impact for Registered Indians who are social assistance recipients, but to reiterate — it is a policy decision whether to include it in earnings.

The Modern Annuity also affects the CCB but has much less impact on reducing benefits than social assistance, because payments extend to quite high levels of family income.

In summary, depending on the number and age of children, lower income recipients of the Modern Annuity can expect to receive income increases of over $10,000.

The Cost of the Modern Annuity

The Modern Annuity represents a significant program cost. Based on an approximate current population of Registered Indians in 2016 of 970,562 (Indigenous Services Canada, 2018), assuming 60% are over 18, about 582,000 would be eligible, for an annual cost of $4.4 billion at $7,500 per person. Just to set context, this is about the same as the cost of the old age tax credit ($4 billion), and the exemption of GST payment on specified food items, and 1/6 the cost of the Canada Child Benefit ($24.7 billion). Projections of the eligible population in 2030 are 1.070 million (Canada, 2009), assuming 30% are under 18 (due to increased average age), suggesting an eligible population of 750,000 eligible adults and a cost for the MA of $5.6 billion (in 2020 dollars).

A collateral benefit for First Nations parents who file tax returns is that they become eligible for the CCB. Current estimates place the number of eligible Indigenous families *not* receiving the CCB at between 30% and 40% of families with children. This is a general issue, with estimates of between 10% and 12% of the Canadian adult population missing out on benefits such as the Canada Child Benefit, Old Age Security, etc. (Robson & Schwartz, 2020). If we assume an average CCB payment of $5,000 per family, this means the Indigenous families are not collecting as much as $354 million (Prosper Canada & AFOA Canada, 2018). An unintended consequence of increased tax filing is that increased spending on the CCB would raise the projected cost of the MA to almost $5 billion. But to reiterate, this is still only about 25% of what Canada is spending on the child benefit.

CONCLUSION

The modern annuity we present represents a substantial and concrete form of reconciliation. We have attempted to ground the rationale for the modern annuity in the existing treaties negotiated with the Crown of England and then the Federal government. However, the line is imperfect due to variations in the treaties that led to variation in the interpretation of the intent of treaty provisions. The Modern Annuity we propose shares these features with the annuities found in the historic treaties:

- They are payable in money to individuals,
- While it will have important economic benefits for recipients and will interact with other economic programs, the Modern Annuity is not intended to ameliorate poverty directly or serve other economic goals.
- It represents a leasehold payment from the Government of Canada to First Nations persons for the right to share the land.
- Since the current annuities cover Registered Indians connected to historic Treaty land (they need not be resident to receive the current annuity), we argue that the Modern Annuity be paid to Registered Indians currently covered by comprehensive agreements and those living on unceded lands.

Any new social or economic policy faces conceptual and logistical challenges that will require further study and debate.

1. While the amount of $7,500 used in this paper represents a trade-off between historically rooted values, measures of national wealth, and administratively based parameters, any final value will emerge from a political calculus. The value must represent a reasonable payment for the ceded lands while being politically and fiscally feasible.

2. The final cost is only approximate. The direct cost of the annuity will be about $4.2-billion. However, once Indigenous persons file income tax returns and start collecting the Canada Child Benefit and Old Age Security, the indirect cost will be higher. But rather than seeing that as a cost, it really is a transfer to Indigenous peoples that could substantially reduce poverty, empower individuals, and represent tangible reconciliation. Social assistance costs could decline, especially if provinces treat it as earning. The direct fiscal cost will likely result in offsetting benefits, reduced social costs, and increased spending in communities.

3. Integration of the modern annuity with other economic programs will require careful design. For example, depending on the design, a basic income stacked with the modern annuity may generate substantial payments that could prove politically tricky. The key is whether the annuity is counted as part of income, which adjusts the amount paid out of income-tested programs. This represents another detail to be resolved.

4. Arguably income inequality exists among First Nations. Some with Comprehensive Agreements (e.g., Tsawwassen First Nation) and others situated in rapidly growing areas (Musqueam Band) and those with mineral/oil agreements (Fort McMurray FN) are seeing rapidly increasing incomes. Others, particularly those in remote northern areas, remain mired in poverty. The modern annuity, as a flat payment, will have an important antipoverty impact on low-income communities, especially if recipients are required to file an income tax return and other benefits (e.g., Canada Child Benefit) flow from that. A flat subsidy will differentially benefit lower-income communities relative to higher-income communities. The Modern Annuity will reduce inequality.

5. The Modern Annuity we propose focuses on First Nations. Extensions to Métis and Inuit are possible, but must use other rationales than the annuities in the historic treaties.
6. The initiation of an entitlement raises the issue of back payments. Aside from the obvious increase in the cost of the modern annuity, the form of the back payments determines the fiscal impact. Should only those currently living receive back payments from the date of their eighteenth birthday? Or should back payments be calculated for the ancestors who have received annuities since some start date, say 1900? These are complex issues not addressed in this paper.
7. If the Modern Annuity is a leasehold for the right to share the land, the status of fee simple ownership, in which all Canadians participate (Indigenous and non-Indigenous alike) must be confirmed. In return for the annuity, First Nations may need to relinquish any prior claim on land owned in fee simple.
8. Extension of the Modern Annuity to children requires passing a political and fiscal feasibility test, and we offer no position on that.
9. Finally, with eligibility open to Registered Indians only, the process of confirming status remains fundamental to the integrity and political viability of the Modern Annuity. The reason we propose annuity payments directly to individuals is to remove incentives to increasing the numbers of Registered Indians solely to generate more revenues for First Nations governments. Also, continued support from Canadian taxpayers will require assurance that those receiving the Modern Annuity are genuinely eligible.

The Modern Annuity offers a concrete policy in support of reconciliation that promises to directly benefit the lives of almost one million Canadians. While it certainly combats poverty among First Nations members and provides families with more financial autonomy, more fundamentally the Modern Annuity goes some distance in restoring the balance in sharing the value of the lands of Canada and honours the original intent of the treaties.

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Appendix: The Impact of the Modern Annuity on Different Families

This appendix reviews the potential impact of the Modern Annuity on different families. The scenarios are hypothetical and serve only to illustrate how this may affect different families.

Scenario 1 — No earnings and no children

Table A1: Scenario 1 shows a "base" case with no children and no earnings. These examples show two households that have only social assistance and the Modern Annuity as sources of income. The scenario uses two calculations — one where social assistance combines the Modern Annuity with earnings to reduce the social assistance amount and the other without earnings adjustment.

A Modern Annuity of $7,500 translates to $625 each month. Using the Manitoba Income Assistance Regulation (Manitoba, 2020), Table A1 shows the Basic Social Assistance and the Housing Allowance for couples and singles with no children.

TABLE A1
Scenario 1: Monthly Income — No Earnings and No Children

	1	2	3	4
	Married or Common Law	**Married or Common Law**	**Single individual**	**Single individual**
	MA Included as Earnings	MA Excluded as Earnings	MA Included as Earnings	MA Excluded as Earnings
Earnings	$0	$0	$0	$0
MA	$1,250	$1,250	$625	$625
Soc. Assist Basic*	$344	$344	$455	$455
Soc. Assist — Housing*	$658	$658	$576	$576
Earnings Adjustment	($735)	$0	($298)	$0
Net SA	$267	$1,002	$734	$1,031
CCB	$0	$0	$0	$0
GST/HST Rebate	$193	$193	$97	$97
Total Income (Pre-tax)	$1,710	$2,445	$1,456	$1,753

Total Income = Earnings + MA + Net SA + CCB+GST/HST rebate.
* Social Assistance computed from Manitoba Assistance Regulations (Manitoba, 1988) (Accessed March 15, 2020).

Column 1 of Table A1 shows the effect of including the MA as earnings, while Column 2 excludes the MA from earnings in the social assistance calculation. It shows that monthly income increases by almost $735/month or almost $9,000/year. Columns 3 and 4 show the situation for single individuals. In this scenario, recipients do not qualify for Canada Child Benefit (CCB), but they do receive the GST/HST rebate. Note that the total income calculations are all pre-tax estimates.

Scenario 2: Earnings from work of $6,000/year with two children under 6

Table A2 shows two households with minimal monthly earnings ($500 per adult) and two children under 6. The presence of young children triggers the CCB. As before, Columns 1 and 3 show the effect of including the MA as income, while Columns 2 and 4 shows the MA bypassing the social assistance earnings reduction.

The earnings reduction is substantial, and including the MA in earning drops the social assistance to almost 0 ($23/month). Including/excluding the MA from earnings has a lower impact on the single individual because earnings are quite low.

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Appendix: continued.

TABLE A2
Scenario 2: Monthly Income — Earnings of $500/Adult and Two Children under 6

	Married/Common Law Couple MA Included as Earnings	**Married or Common Law** MA Excluded as Earnings	**Single individual** MA Included as Earnings	**Single individual** MA Excluded as Earnings
Earnings	$1,000	$1,000	$500	$500
MA	$1,250	$1,250	$625	$625
Soc. Assist Basic*	$596	$596	$455	$455
Soc. Assist — Housing*	$862	$862	$815	$815
Earnings Adjustment	($1,435)	($840)	($648)	($490)
Net SA	$23	$618	$623	$780
CCB	$564	$564	$564	$564
GST/HST Rebate	$62	$62	$50	$50
Total Income (Pre-tax)	$2,899	$3,494	$2,361	$2,519

Total Income = Earnings + MA + Net SA + CCB+GST/HST rebate.
* Social Assistance computed from Manitoba Assistance Regulations (Manitoba, 1988) (Accessed March 15, 2020).

Scenario 3 — Earnings of $2000/month and 1 eligible child for the CCB

At some level of earnings, households become ineligible for social assistance, but they remain eligible for the CCB until quite high levels of income. The combined earnings and Modern Annuity will also reduce the GST/HST credit substantially. Table A3 shows how the MA affects higher income households. The social assistance calculations remain, but neither households are eligible.

TABLE A3
Scenario: Monthly Income — Earnings of $2000/Adult and One Child under 6

	Married or Common Law MA Included as Earnings	**Married or Common Law** MA Excluded as Earnings	**Single individual** MA Included as Earnings	**Single individual** MA Excluded as Earnings
Earnings	$4,000	$4,000	$2,000	$2,000
MA	$1,250	$1,250	$625	$625
Soc. Assist Basic*	$497	$497	$344	$344
Soc. Assist — Housing*	$815	$815	$815	$815
Earnings Adjustment	($3,535)	($2,660)	($1,698)	($1,260)
Net SA	$0	$0	$0	$0
CCB	$191	$234	$282	$282
GST/HST Rebate	$0	$16	$50	$50
Total Income (Pre-tax)	$5,441	$5,500	$2,957	$2,957

Total Income = Earnings + MA + Net SA + CCB+GST/HST rebate.
* Social Assistance computed from Manitoba Assistance Regulations (Manitoba, 1988) (Accessed March 15, 2020).

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Appendix continued.

For consistency, Table A3 retains the earnings adjustment, which, for both households, eliminates social assistance, regardless of whether the MA is included in earnings or not. The inclusion of the MA in earnings makes little difference for these households. The small difference between columns 1 and 2 in A3 reflects a slight adjustment in the CCB.

The calculation of the CCB for these examples assumes that the Modern Annuity forms part of adjusted family income. Swings of a few thousand dollars will not make a difference for household incomes below $31,000, but they can have a larger impact as incomes exceed $46,000.

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