

## **NOTICE OF REPRESENTATIVE ACTION**

### **FOR TREATY 4 FIRST NATIONS AND MEMBERS OF TREATY 4 FIRST NATIONS ENTITLED TO RECEIVE ANNUITIES FROM THE CROWN PURSUANT TO TREATY 4**

#### **INTRODUCTION**

You are receiving this notice on behalf of a Treaty 4 First Nation whose members are entitled to receive annuity payments from the Crown pursuant to Treaty 4. Your First Nation has the right to participate in a lawsuit for augmented annuity payments, described below.

*Should your First Nation and its members want to participate in the Action and be represented by Chief Derek Nepinak and Minegoziibe Anishinabe and Chief Bonny Lynn Acoose and Zagime Anishinabek, please contact Melissa Liauw at [mliauw@mccarthy.ca](mailto:mliauw@mccarthy.ca).*

*The lawyers for Chiefs Nepinak and Acoose have entered into a contingency fee agreement so there are no legal fees to be paid unless the plaintiffs win. Your First Nation does not have to take a loan or buy an insurance policy to finance this litigation. If the plaintiffs win, the court will assess the legal fees paid out of the judgment or settlement to ensure that they are fair and reasonable.*

*Should your First Nation and its members wish to participate in the Action as added party plaintiffs, you must apply to the Court and make your own arrangements for legal representation as needed.*

#### **YOUR ACTION IS REQUIRED**

On February 2, 2024, Chief Derek Nepinak of Minegoziibe Anishinabe First Nation and Chief Bonny Lynn Acoose of Zagime Anishinabek First Nation (the “**Plaintiffs**”)<sup>1</sup> commenced a claim against the federal government for failing to maintain the value of annuity payments under Treaty 4 (the “**Action**”).

The Federal Court has ordered that this action proceed as a representative action and directed notice to First Nations whose members are entitled to annuity payments under Treaty 4.

In accordance with the Court’s direction, this notice is being delivered or mailed to each Treaty 4 First Nation to advise them of their right and their members’ right to participate in the Action either under the representation of Chief Nepinak and Chief Acoose or as added party plaintiffs.

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<sup>1</sup> Chief Murray Clearsky of Waywayseecappo First Nation has commenced a parallel claim for augmented annuity payments under Treaty 4 in the Court of King’s Bench of Manitoba, which is currently being held in abeyance while Chief Clearsky works with Chief Nepinak and Chief Acoose to advance their claim in the Federal Court. Chief Clearsky is represented by the same counsel as the Plaintiffs.

## **WHAT IS THE ACTION ABOUT?**

This Action asserts that Canada breached its obligations by failing to increase the annuities that it pays the members of Treaty 4 First Nations. Canada has paid five dollars per year to beneficiaries of Treaty 4—an amount that has been frozen for 150 years. The Action asserts that Canada owes annuities that are indexed or augmented to maintain meaningful purchasing power, which reflects the intention of the parties when Treaty 4 was formed.

Among other relief, the Action seeks (i) an order requiring Canada to compensate beneficiaries of Treaty 4 for unpaid or underpaid annuity payments; and (ii) a declaration that Treaty 4 contains an augmentation or indexation provision requiring Canada to continually adjust annuity payments for losses in purchasing power. In this manner, the Action is intended to both address the wrongs of the past and safeguard the future.

The Court has not decided whether any of the Plaintiffs' allegation are true. If there is no settlement, the Plaintiffs will have to prove their claims in Court.

## **WHO REPRESENTS THE PLAINTIFFS?**

The Plaintiffs are represented by McCarthy Tétrault LLP, Norman Boudreau Law Corporation, Jason Zushman Law Corporation, and Myers LLP.

## **HOW DOES MY FIRST NATION OPT IN TO THE ACTION?**

*Unless your Treaty 4 First Nation takes steps now, your Treaty 4 First Nation and its members will not be parties to the Action and will not receive the benefit of the ruling if the Action is successful.*

To participate in the Action on its own behalf and on behalf of its members, a Treaty 4 First Nation must either:

- (a) Pass a Band Council Resolution consenting to representation by the Plaintiffs; or
- (b) Apply to Federal Court to participate as an added party plaintiff.

If your First Nation and its members want to participate as a represented parties, your First Nation must pass a Band Council Resolution to that effect and mail it, fax it or email it to McCarthy Tétrault LLP using the contact information set out below. A template Band Council Resolution is enclosed as **Appendix "A"** to this Notice for your consideration.

If your First Nation and its members want to participate as added party plaintiffs, the First Nation must apply to the Court to make that election and arrange for its own legal representation, as needed.

## **FINANCIAL CONSEQUENCES**

Treaty 4 First Nations and their members who participate in this action, either by consenting to representation by the Plaintiffs or as added party plaintiffs, will receive the benefit and be bound by any ruling.

If the Action is not successful, represented parties will not be responsible for the fees of the Plaintiffs' lawyers. Added party plaintiffs will be responsible for their own legal representation and any associated legal costs.

If your First Nation does not opt in to this Action as a represented party or join the Action as an added party plaintiff, any monetary award for past failure to augment annuity payments to adjust for inflation **will exclude your First Nation and its members.**

## **AGREEMENT WITH SOLICITORS REGARDING FEES**

If your First Nation opts in to the Action, it does not need to pay any of the Plaintiffs' lawyers' fees out of pocket. If the Action is successful, the Plaintiffs' lawyers' fees payable will be paid out of any judgment or settlement obtained following resolution. If the Action is successful, the court will approve fair and reasonable legal fees for the Plaintiffs' lawyer, which are capped at both a percentage of any recovery and a multiplier on the value of the lawyers' time.

The Plaintiffs' lawyers will pay disbursements to advance the Action, and they will only be recoverable out of a judgment or settlement if the Action is successful. If the action is not successful, the disbursements will be the responsibility of the Plaintiffs' lawyers.

As an added party plaintiff, you will be responsible for your own legal fees.

## **FURTHER INFORMATION**

If you require further information about this Action you may contact Melissa Liauw at McCarthy Tétrault LLP at the address set out above or through any of the following means:

**Phone:** (416) 601-8233 (direct)

**Email:** [mliauw@mccarthy.ca](mailto:mliauw@mccarthy.ca)

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