



Court File No. A-211-25  
Federal Court File No.: T-199-24

**FEDERAL COURT OF APPEAL**

**CHIEF DEREK NEPINAK**

and

**CHIEF BONNY LYNN ACOOSE**

APPELLANTS

- and -

**HIS MAJESTY THE KING**

RESPONDENT

Proposed Class Proceeding commenced under Part 5.1 of the *Federal Courts Rules*,  
SOR/98-106

**NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellants. The relief claimed by the Appellants appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellants. The Appellant request that this appeal be heard at 90 Sparks Street, Ottawa.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the Appellants' solicitor or, if the Appellants are self-represented, on the Appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 2, 2025

Issued by:

Address of local office:



**ALICE PRODAN GIL**  
SENIOR REGISTRY OFFICER  
AGENT PRINCIPAL DU GREFFE

90 Sparks St. 5 Fl, Ottawa, Ontario K1A 0H9

TO: **The Chief Administrator**  
Thomas D'Arcy McGee Building  
90 Sparks Street  
Ottawa, ON K1A 0H9

TO: **Attorney General of Canada**  
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Lawyers for the Respondent

**NOTICE OF APPEAL**

**THE APPELLANTS, CHIEF DEREK NEPINAK AND CHIEF BONNY LYNN ACOOSE, APPEAL** to the Federal Court of Appeal from the judgment of the Honourable Justice Zinn of the Federal Court dated May 22, 2025.

**THE APPELLANTS ASK THAT:**

- (a) the order of the Honourable Justice Zinn refusing to certify this action as a class proceeding by quashed;
- (b) this action be certified as a class proceeding on the terms proposed by the Appellants;
- (c) no costs be awarded in this appeal; and
- (d) such further and other relief as counsel may request and this Honourable Court may allow.

**THE GROUNDS OF APPEAL** are as follows:

1. The Honourable Justice Zinn made palpable and overriding errors of fact and/or errors of law in his analysis and decision to dismiss the Appellants' motion to certify the action as a class proceeding, including his findings that:

- (a) the right to annuities under Treaty 4 is a collective right that is exercised individually;
- (b) modern-day Bands recognized under the *Indian Act*, R.S.C. 1985, c. I-5, are necessary intermediaries for a representative claim regarding annuities that have always been paid to individual beneficiaries;
- (c) the features of a class proceeding that are intended to promote access to justice, including the no-cost regime, uniform notice to class members, simplified procedures to resolve individual issues, and court supervision over procedural steps, can be effectively replicated in a representative action;
- (d) the plaintiffs failed to show that class members would be excluded or discouraged from joining a representative action;
- (e) a representative action would minimize the danger of a multiplicity of proceedings and inconsistent verdicts, relative to a class proceeding where inclusion is the default;

- (f) judicial economy is undermined by the opt-out regime in a class proceeding, rather than the opt-in regime of a representative action;
- (g) the plaintiffs provided no workable methodology to assess aggregate damages;
- (h) the action does not disclose individual issues for some or all members of the proposed class; and
- (i) the preferable procedure criterion for certification was not met.

2. The motion judge made palpable and overriding errors of fact and/or errors of law in ordering that the action proceed as a representative action. Specifically, by finding that:

- (a) A representative action would yield a single binding interpretation of the right to enhanced annuities under Treaty 4;
- (b) a representative action minimizes duplicative fact-finding and enhances manageability by imposing a higher threshold for exclusion, when in fact it imposes a threshold for *inclusion*; and
- (c) a representative action requires First Nations to authorize the participation of their membership.

3. The motion judge made errors of law in ordering an unduly onerous representation order which requires the authorization of some 34 First Nations despite the Appellants' undisputed standing to bring the action.

4. The motion judge made palpable and overriding errors of fact and/or errors of law in deciding that portions of the Appellants' affidavits and unspecified sections of Dr. Baskatawang's report are inadmissible.

5. The judgment has resulted in a substantial miscarriage of justice.

6. Such further and other grounds as counsel may advise and the Court may permit.

7. **THE BASIS OF THE FEDERAL COURT OF APPEAL'S JURISDICTION IS** the decision appealed from is an interlocutory judgment of the Federal Court pursuant to s. 27(1)(c) of the *Federal Courts Act*, R.S.C., 1985, c. F-7.



June 2, 2025

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Lawyers for the Appellants

Court File No. \_\_\_\_\_  
Federal Court File No. T-199-24

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**FEDERAL COURT OF APPEAL**

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**CHIEF DEREK NEPINAK**

and

**CHIEF BONNY LYNN ACOOSE**

Plaintiffs

- and -

**HIS MAJESTY THE KING**

Defendant

Class Proceeding commenced under Part 5.1 of the  
*Federal Courts Rules*, SOR/98-106

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**NOTICE OF APPEAL**

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