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Federal Court Rejects Class Action for Treaty 4 Annuity Claims: Representative Action Ordered

The Federal Court's recent decision in *Chief Derek Nepinak and Chief Bonny Lynn Acoose v His Majesty the King* is a significant procedural decision that could have implications for many cases asserting Indigenous rights. The specific issue in this case was whether claims for the indexation of Treaty 4 annuity payments should proceed as a class action or as a representative proceeding. However, the case potentially has broader implications. The outcome clarifies the procedural path for collective treaty rights claims. More generally, this case highlights the multiple procedural vehicles available to assert group claims and demonstrates that class actions are not the only available tool.

Background: Treaty 4 Annuity Class Action

Treaty 4, signed in 1874, covers parts of present day Saskatchewan, Manitoba, and Alberta. In exchange for land, Canada promised annual annuity payments to First Nations: $25 to each Chief, $15 to each Headman (up to four per band), and $5 to every other man, woman, and child.

Chiefs Nepinak and Acoose, on behalf of their Nations and all Treaty 4 annuitants, commenced a proceeding in the Federal Court against Canada. They argued that the annuity payments should be indexed to inflation to preserve their real value and sought damages for alleged underpayment. In the context of that case, they sought to certify the proceeding as a class action.

Justice Zinn of the Federal Court dismissed the motion to certify the proceeding as a class action. While the other requirements for certification were met, the Court found that a class action was not the "preferable procedure" under Rule 334.16(1)(d) of the Federal Courts Rules. Instead, the Court ordered that the matter proceed as a representative action under Rule 114.

The Court's Reasoning: The Nature of Collective Rights

A central pillar of the Court's reasoning was the collective nature of the rights at issue. The Court emphasized that the right to annuity payments under Treaty 4 is a collective right, held by the First Nations as a whole, even though payments are made

to individuals. The Court noted that the Supreme Court of Canada has consistently held that treaty rights are communal and belong to the band, not to individual members. The Court cited several authorities, reinforcing that the legal entitlement to annuity payments is inseparable from membership in a Treaty 4 First Nation.

The Court distinguished between class actions and representative actions by focusing on the source of commonality. Class actions are designed for situations where individual claims share common issues of law or fact and include an opt-out mechanism to protect individual interests. Representative actions, by contrast, are appropriate where the right asserted is inherently collective – arising from the nature of the parties themselves, such as a First Nation or band. In these cases, the group's identity and the indivisibility of the right make a representative action the more suitable procedural vehicle.

A key concern for the Court was the risk of fragmented litigation and inconsistent treaty interpretation if a class action were allowed. The Court noted that the opt-out feature of class actions could permit subgroups or individuals to pursue separate lawsuits, potentially leading to conflicting judicial decisions on the same treaty provision. The Court stressed that treaty interpretation demands consistency and uniformity, and that a representative action – where all represented parties are bound unless a court grants a specific exclusion – minimizes the risk of parallel proceedings and contradictory outcomes.

The Court also noted that representative actions under Rule 114 now include procedural safeguards like those in class actions, such as court supervision over notice, settlement, and fees. This means that access to justice and cost-sharing benefits are preserved, while the risk of duplicative litigation is reduced.

The plaintiffs argued that a class action would better ensure broad participation and cost-sharing, especially for claimants with modest individual claims. The Court, however, found no evidence that representative actions would exclude or discourage participation by such claimants. If a First Nation's leadership chooses to participate, all its members are effectively included. The Court also found that the calculation of damages – if indexation is ultimately ordered – would be straightforward and manageable in either procedural framework, as the Crown already maintains the necessary records.

Implications: Representative Actions Preferred for Collective Treaty Rights

This decision reinforces the notion that claims involving the interpretation of collective treaty rights – such as annuity

payments – may be best advanced through representative actions, not class actions.

This case is a signal that the Federal Court may favor representative proceedings over class actions in cases where the rights at issue are inherently collective, such as treaty rights. The decision provides a roadmap for structuring future Indigenous rights litigation and highlights the importance of procedural choices in advancing collective claims. Lawyers representing indigenous groups or other groups with collective rights should carefully consider the appropriateness of class actions versus representative actions.

Key Takeaways

While the immediate context of this case is Indigenous rights litigation, the decision also shows that class actions are not the only mechanism for the resolution of claims that impact a larger group. Class actions have historically been the dominant procedural mechanism for addressing these claims impacting large numbers of people, and the dismissal of a certification motion was often seen as the end of the road for a plaintiffs' ability to assert such claims. In fact, as this decision demonstrates, certification is not necessarily the end of the road, and Canadian law contains several different procedural vehicles to assert group claims. Enterprising plaintiffs' counsel will no doubt explore more of them in years to come.