

BRIEFING NOTE

TO: BC Specific Claims Working Group
FROM: Jody Woods, Research Director and A/Administrative Director
DATE: MAY 12, 2021
RE: UPDATE ON CANADA'S NEW RESEARCH FUNDING GUIDELINES

PURPOSE

To inform political leadership about recent developments with respect to specific claims and Access to Information

RECOMMENDATIONS

1. Research Funding Guidelines:
 - a. continue gathering information and reporting.
 - b. Possibly conduct a legal review of the funding guidelines.
 - c. Continue technical engagement
 - d. Prepare political response as necessary, including a resolution

New Draft Research Funding Guidelines

1. Funding for the research, development, and submission of specific claims is administered by the Negotiation Support Directorate (NSD), which falls under the Treaties and Aboriginal Government sector of CIRNAC. NSD manages the available annual budgets for all aspects of Canada's Specific Claims Program (research, negotiations, Specific Claims Tribunal).
2. The CRU-NSD working group, which has been active from the mid-2000s to 2016 in August 2020 to address issues of concern arising out of new procedures imposed during the 2020-2021 funding cycle. Discussions focussed on communicating divergent understandings of program outcomes, reviewing NSD's draft of new research funding guidelines, revisions to annual call letters inviting CRUs and First Nations to apply for research funding, and the process by which NSD allocated the \$12 million in research and development funding announced by the federal government in its 2019 annual budget. In early 2021, NSD made significant revisions to the draft guidelines and sent them to the NCRD and the AFN. we have identified a number of serious concerns:

1. Guideline objectives do not align with First Nations' priorities or Canada's commitments

- a. Overall objectives in guidelines do not align with those articulated by First Nations (i.e. SCB stressed claim submission to the Specific Claims Branch as sole measure of success. First Nations emphasize ensuring full support for all Nations to research and develop their claims in accordance with UNDRIP, ensuring Nations and CRUs have resources equal to Canada, as well as autonomy and flexibility for CRUs and Nations involved in the research process).
- b. Overall objectives in guidelines do not align with UNDRIP or Canada's public commitments to reconciliation, as they are based on calculating number of claims submitted, rather than equality and fairness of the process between First Nations and Canada.
- c. A focus on what NSD calls "fair access" to funding situates First Nations as competitors for limited funding, rather than on providing adequate resources for all First Nations wanting to research their claims and ensuring equality of access between First Nations and Canada.

2. Guidelines impose new funding limits that impede access to claims resolution

- a. The guidelines introduce an arbitrary and unreasonable 5-year limit on funding to research claims.
- b. There is an increase in the allowable annual per claim funding amount (from \$25K to up to \$40K) but the methodology for determining this amount is not transparent.

3. NSD can allocate research funding dollars for non-research activities

- a. A new section in the guidelines indicates a portion of research and development funding is being used to support negotiation activities, including “joint activities” where additional research is required to fill “evidentiary gaps”. These joint activities are not described or defined.
- b. The new draft guidelines allow for research funding to be used for “consultation,” “mediation,” and other activities that do not appear to be related to the research and development of claims. This includes policy reform work of the AFN.
- c. The guidelines contain unclear definitions and rationales for post-assessment research. Negotiation loan funding should cover all costs associated with activities that occur during the negotiation phase.
- d. Unspent /surplus funds have been reabsorbed into the department (over \$3 million in two years not redirected to First Nations’ research), while some research or research related activities have not been funded or are under threat.
 - i. In some instances, First Nations’ research proposals or activities/projects that could support research directly have been denied (in the same years surpluses were reabsorbed)
 - ii. NSD would not commit to supporting the National Claims Research Workshop, an annual event in its 28th year, at which researchers share professional experience and knowledge to support the advancement of claims.
- e. There appears to be a direct link between the research funding and negotiation loan funding guidelines, including a new deadline for “joint activities” in both, but the parameters seem arbitrary and unclear with no clear methodology.

4. Authority Over Funding

- a. The guidelines give SCB decision-making authority over funding in some circumstances. They stipulate SCB must grant approval for specific funding requests associated with post-submission activities, such as conducting additional research, holding meetings, undertaking legal work, or “joint research” projects where there are deemed to be gaps in evidence. SCB must also approve research funding for claims that exceed the imposed 5-year timeline.
- b. SCB is essentially one party in the claim and controls access and works closely with DOJ to assess claims and must remain arms length from funding processes.
- c. First Nations’ claims in research include development of legal arguments; details about claim progress must be confidential.

CURRENT STATUS

1. The CRU-NSD Working Group and the NCRD will meet again to review the guidelines.
2. We have an ATI request pending that is aimed at understanding the internal government directives that informed recent changes to the funding guidelines.
3. BCSCWG and CCoLTR Co-Chairs are meeting to discuss these merging issues and possibly develop a strategy to address.

NEXT STEPS**4. Gather more information:**

- a. NCRD will share a working document of concerns associated with the new guidelines among specific claims technicians. The document will ask for information about the experiences of CRUs and Nations with specific issues or concerns. All claims technicians/research directors are encouraged to add their concerns and questions to the document and pass along the link to others in your organization who may have further information. Your contributions will not be viewable by other respondents and all names of individuals, CRUs, and First Nations as well as identifying information about your claims will be kept confidential.
- b. UBCIC has made an Access to Information request for “records relating to the development of draft specific claims research funding guidelines ...from August 1, 2020 to April 30, 2021.”
- c. The NCRD has asked the AFN to conduct a legal analysis comparing the new guidelines with new draft negotiation funding guidelines to find points of crossover and assess implications for First Nations. They indicate this should be complete in the week of May 12, 2021.
- d. UBCIC is considering conducting a legal review of the funding guidelines.

5. **Analyze and present results:** The NCRD may conduct additional research and prepare a report for circulation and endorsement by political leadership. This work will allow leadership to make informed decisions about action they may wish to take.

6. Political direction and endorsement:

- a. BCSCWG may recommend preparing a resolution, sending a letter, or endorsing reports produced by the NCRD.
- b. Ensure the CCoLTR is briefed on technical issues that may impede Nations access to justice