

**Funding Application Guidelines - Contributions for the Research,
Development and Submission of Specific Claims and Joint Activities**

DRAFT FOR DISCUSSION

Effective as of XX

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1. Introduction

Specific Claims deal with past wrongs against First Nations and the Government of Canada works with First Nations under the Specific Claims Policy to resolve outstanding specific claims through negotiated settlements. The primary objective of the federal government is to achieve fair and final settlements of outstanding lawful obligations to First Nations through a process which is fair, respectful, appropriately transparent and where settlement is achieved within a reasonable period of time. Although court or the Specific Claims Tribunal are options for a First Nation, negotiation remains the preferred means of resolution by the federal government. The Specific Claims Policy establishes the principles and process for resolving specific claims through negotiation, and can be found at <https://www.rcaanc-cirnac.gc.ca/eng/1100100030501/1581288705629#crit>.

2. Objective and Expected Results

The funding envelope for Contributions for the Research, Development and Submission of Specific Claims has been established to support First Nations in the development and submissions of Specific Claims.

The majority of the funding envelope will be used for the development of new claim submission (around 90% of the total funding envelope). Priority will be given to supporting all of the funding request for the development and submission of new claims. Research funding may also be provided to support joint research when Canada is unable to complete the assessment of claims because of evidentiary gaps.

A portion of the funding envelope may be used for claims that were accepted for negotiations to support specific joint activities related to developing a common understanding of the claim and its scope:

- further historical research is necessary to assist the parties (for example: where there are beneficiary issues, in cases where the strength of claim will have impact on compensation or for claims partially accepted where Canada indicated that further collaborative work is advisable; or
- for further joint activities during the course of negotiations (such as mediation on specific aspects of the claim) to come to a common understanding of the claim and promote resolution.

Research for the development and submission of Specific Claims

First Nations are responsible for researching their own claims and submitting those claims. Contributions for the research, development and submission of Specific Claims provide financial assistance to support First Nations to formally enter the specific claims process.

It is expected that as a result of the funding for First Nations' research and development of specific claims, the number of claims submitted by First Nations will increase.

Specific joint activities

During negotiations, contributions for research can also support First Nations to work with Canada to expand the scope of a claim that has been partially accepted or where a lack of evidence will have an impact on compensation, and to develop a common understanding of the claim through additional activities such as mediation.

It is expected that this funding will contribute to a more collaborative process in coming to a common understanding of claims.

Research funding for the development of new claims may also be provided to support joint research when Canada is unable to complete the assessment of claims because of evidentiary gaps.

3. Who can apply?

Recipients eligible to receive funding under this program are the following:

- First Nation entities mandated by Bands/First Nations to conduct specific claims research on their behalf (Claims Research Units);
- Bands/First Nations*; and
- Indigenous Representative Organizations.

The following potential approach is for discussion as we are looking for options to respond to request from First Nations to withdraw from CRUs without getting involved in the established relationship while ensuring appropriate use of public funds. For the discussion, it is important to note that currently there is no ability to separate out the funding allocated by Canada to the CRU and associated unspent funds for each individual claim. Furthermore, CRUs have expressed concerns that First Nations may not have all the context/information when making the decision to withdraw a mandate.

Bands/First Nations who have provided a mandate to a Claims Research Unit (CRU) to conduct a claim research and development on their behalf cannot receive funding separately from Canada for the same claim. First Nations who decide to withdraw a mandate given to the CRU must inform the CRU in writing. In order to accommodate the request, both parties will need to establish the appropriate agreement and process for the completed research to be shared with the First Nation and for the allocated funding to support the research of this claim to be flowing directly to the First Nation or its delegated representative.

The Claims Research Unit who transfers funds to the Band/First Nation who wishes to withdraw its mandate to research a claim will remain accountable for the obligations included in the funding agreement and is responsible for making certain that the Band/First Nation fulfills its obligations to the CRU.

When the Claims Research Unit transfers funds to a Band/First Nation, the CRU must ensure that:

The responsibilities, roles and relationship between the Band/First Nation and the CRU are clearly stated;

The Band/First Nation provides the CRU with timely reports in a way that allow for the CRU to comply with the activity and financial reporting and record-keeping requirements;

The Band/First Nation consents to allow the CRU to allow the Recipient to provide the Government of Canada with financial and other reports that the Band/First Nation submits to the CRU.

4. Application Deadline

Research funding for the development and submission of Specific Claims

The deadline to submit a proposal for research funding is **January 31 of each fiscal year** (example: for fiscal year 2022-2023, funding proposals are to be submitted by January 31, 2022). Should funding remain unallocated after the consideration of the submissions received by January 31, CIRNAC could offer a second opportunity to submit new or revised funding proposal in September/October.

Specific joint activities

Through a separate and joint submission process, the deadline to submit a proposal for specific joint activities is **September 30** of the fiscal year for which the funding is to be allocated (example: for fiscal year 2021-2022, joint funding proposals are to be submitted by September 30, 2021).

5. Eligible Activities and Expenditures

Research funding for the development and submission of Specific Claims

Eligible activities are those supporting the fully documented specific claims submissions (see *Annex A - Stages of Specific Claims Research for Measurable Progress*), including, but not limited to:

- community engagement/consultation in the identification and assessment of potential claims;
- preliminary research;
- research and information gathering (Elder interviews, archival research)
- in-depth document research;
- write-up of claims research reports;
- legal analysis of claims and incorporation of legal arguments;
- meetings with First Nations;
- submission of claims to First Nation and/or to Canada;
- joint activities and/or meetings with Canada in the development of claims; or

- other activities related to the development of claims submissions;

Eligible expenditures are those supporting the eligible activities, which may include, but is not limited to: salaries and wages, accommodations, administrative and reporting costs, information retrieval and storage, travel costs within the Treasury Board Secretariat's guidelines as specified in the Travel Directive in effect at the time of travel, professional services (e.g., legal advice, research consultants), community meetings/workshop costs (e.g. room and equipment rentals), honoraria, and communication products.

Specific joint activities funding

Funding can be provided, through a separate submission process for specific joint projects or activities with Canada that are aimed at expanding the scope of a claim that has been partially accepted or where a lack of evidence will have an impact on compensation, or at developing a common understanding of the claim. As agreed to by the parties at the negotiation table, this can include further historical research/seeking of oral evidence; development of legal arguments; hiring of experts or consultant; mediation/engagement/consultations. The scope of the activities and choice of process required will be jointly agreed to by the parties and will need to be approved by the Senior Director, Negotiations Operations before being considered. This is to ensure that activities that are already funded through loan funding do not also receive contribution funding.

6. Ineligible Activities and Expenditures

Ineligible activities and expenditures are those that are not related to the research and development of specific claims and/or activities that are already funded through the loan funding in support of negotiations. Claims which Canada has accepted for negotiation in the specific claims process are eligible for Negotiation Support Funding. More information on the Specific Claim Negotiation Support Funding eligibility and application process can be found at the following address: <https://www.rcaanc-cirnac.gc.ca/eng/1409247628791/1539692507972>.

Activities associated with the costs of litigation and Specific Claims Tribunal are also not eligible, unless written approval by the Department has been obtained as pertinent to the development of the claims submission. Funding can be provided to support First Nations who choose to file a specific claim with the Specific Claims Tribunal of Canada. More information on the eligibility and application process can be found at the following address: <https://www.rcaanc-cirnac.gc.ca/eng/1529351013700/1551970150264>.

Travel costs which exceed the rates set for in the Treasury Board Secretariat's Travel Directive are not eligible for funding.

Honorariums cannot be provided for those First Nations representatives who receive a salary through band administered funding.

7. Maximum Amount of Funding

Research funding for the development and submission of a Specific Claim

The maximum of research funding per fiscal year for an active claim is determined based on the number of requests received, the annual budget available, the application of benchmark/rates , and complexities (between \$25,000 to \$40,000 per active claim)

For research stages 1 to 7 (development of claim to submission to SCB) - Claims will be funded for a maximum of five years (appearing on a workplan for 5 fiscal years, no requirement of being consecutive years). Therefore, only claims that are actively being researched are to be included on the workplan for a given fiscal year.

For research stages 8 and 9 (following Submission to SCB) - funding can be provided on an as required basis , where a clear indication of the need for further research, meetings, or legal work has been identified and are required following a request made by SCB. This may also include joint research project where Canada has indicate that it is unable to finalize the assessment because of a gap in evidence. Funding request for these exceptions at this stage will involve approval from the Director of Research and Assessment at SCB.

Specific joint activities

The amount of funding for specific joint projects or activities will be defined by the First Nations and Canada, as the scope and duration will be limited to achieving a specific result within a given fiscal year. The allocation of funds will depend on the scope of the project will be subject to the availability of funds. The amount of funding will need to be approved by the Senior Director, Negotiations Operations.

8. Determination of the Amount of Funding and Stacking

Research funding for the development and submission of Specific Claims

Funding will be awarded to each eligible funding recipient based on:

- annual research funding available;
- work plan provided describing the mandate, the claim, the stages, and activities supporting the research, development and submission of a

- specific claim for the fiscal year; and for the subsequent fiscal year for multi-year research plan (see stages and work plan Annex A & B);
- budget provided describing the eligible specific costs to complete the work plan activities for the fiscal year and for the subsequent fiscal year for multi-year research plan (see financial summary Annex B);
- the review of the previous years' expenditures and identification of unexpended funding
- measurable progress report provided describing work completed and status of the research, development and submission of a claim, where applicable (see Annex C). Any claims remaining on research plans for more than five (5) years will not be funded, unless exception is granted by the **Director of Research and Assessment** for Stages 8-9; and
-
- other funding assistance from the Crown or from any provincial, territorial or municipal government that may be used for any of the eligible activities. First Nations are required to declare any and all sources of funding to support the research, development and submission of claim that are expected to be received or that are received, including all funding from the Government of Canada and from provincial, territorial, and municipal governments. Annual financial reporting must show all sources of funding received.

Specific joint activities

Funding will be provided for one fiscal year and results of the special projects should be finalized during the year (special report, finalization of a mediation or consultation process, etc.). The amount of funding is subject to approval from the Senior Director, Negotiations Operations and will depend on availability of funds.

9. Application Process

Research funding for the development and submission of Specific Claims

Applications for funding must be submitted to Negotiation Support Directorate by the Claims Research Unit or Band/First Nation in accordance with the application deadline and shall include the following:

- For Claims Research Units, a list of member Bands/First Nations which have given a mandate to conduct claims and Band/First Nation Council resolutions or other means of a general mandate given;

- For Bands/First Nations who have given a mandate to a third party to submit an application for research funding on their behalf, a Band/First Nation Council resolution or other means of mandate given;
- Details on salaried positions and names, if applicable;
- Annual or multi-year work plan describing for each fiscal year the mandate, the claim, the stages, and activities supporting the research, development and submission of a specific claim (see example work plan Annex B);
- Annual or multi-year budget describing for each fiscal year the eligible specific costs to complete the work plan activities (see example financial summary Annex B);
- For each subsequent fiscal year of a multi-year agreement, a revised/updated work plan and budget for the fiscal year;
- A measurable progress report describing work completed and status of the research, development and submission of a claim, where applicable (see example Annex C).
- Details on professional services required for the fiscal year which includes list of activities, timelines, estimated level of effort (i.e. number of hours of work, travel, other type of resources needed), name of the firm (if applicable), etc.

Applications are to be submitted via email to the following email address and include in the subject line of the email, the following information: *Name of the applicant – Specific Claims Research Funding submission Year of proposal.*

aadnc.unitedufinancement-nego-fundingunit-nego.aandc@canada.ca

To the Attention of:

Director, Negotiation Support Directorate
Fiscal Branch
Treaties and Aboriginal Government Sector

Special joint activities

- Funding request to support joint special project and activities must be submitted to Canada's Lead Negotiator and Assessment who will be seeking approval by the Senior Director of Negotiations, Specific Claims Branch before being submitted to the Funding Unit to process accordingly.
- The funding submission must include a jointly signed Terms of Reference and a service proposal for the fiscal year from a firm\consultant that is jointly agreed to by the parties.

Reporting Requirements The reporting requirements (program and financial reports) are listed in the recipient's contribution agreement and details on these requirements are available in the [Reporting Guide \(https://www.rcaanc-cirnac.gc.ca/eng/1573763961245/1573763982745\)](https://www.rcaanc-cirnac.gc.ca/eng/1573763961245/1573763982745).

Specific Claims Contribution research and development funding must be reported separately from any other funding received by the First Nation.

10. Claims Research Units

Claims Research Units in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Atlantic offer services and expertise to Bands/First Nations to support research, development and submission of claims. Services are to be delivered by the Claims Research Unit as per the mandate given by the member Bands/First Nations.

The Claims Research Unit shall establish ongoing communications with First Nations to ensure needs and accountabilities are met in accordance with the mandate given.

Specific Claims Contribution research and development funding must be reported by the Claims Research Unit separately from any other funding received by the First Nation.

11. Intellectual Property & Ownership Requirements

The research completed with contribution funding supporting the development and submission of a Specific Claims is owned by the First Nation for which it is completed and in accordance with the mandate accepted by the delegated representative. **First Nations who wish to access the research documents completed must inform the delegated representative in writing. In order to accommodate the request, both parties will need to establish the appropriate agreement and process for the completed research to be shared with the First Nation.**

ANNEX A

STAGES OF SPECIFIC CLAIMS RESEARCH FOR MEASUREMENT OF PROGRESS

It is understood by all parties that researching claims is not necessarily a linear process, and that events and research may dictate moving back and forth to different stages within this basic framework. It should also be noted that this list of stages is not necessarily all inclusive, nor will all research projects follow these stages i.e., stages are not limited to the ones listed. However, these Stages will likely apply to the processes and stages for most research for the vast majority of claims.

These stages were developed in consultation with Claims Research Units as a general reference about the potential stages that research might go through as a claim proceeds from identification through to acceptance for negotiation. In addition, new stages may be identified as the research and development of specific claims evolves under future reforms to the Specific Claims Policy and new research requirements are identified that cannot be anticipated at this time. There is a possibility that this stage of the process may need to be re-assessed after a number of claims have proceeded to and past this point of the process.

These stages have been adopted as a tool for understanding and reporting on the progress in specific claims research. Only the bolded main sections would be required. The lettered bullets under each 'stage' are merely to provide information in this document to funding officers as to the kinds of activities that the researchers generally undertake during that particular stage. If the funding officer requires more information or clarification about the work being undertaken in the stage, they will contact the research funding recipients.

An annual review of the "stages" document should occur periodically at the National Research Directors' meeting to ensure the document accurately accounts for work being done. These reviews will be undertaken jointly.

RESEARCH STAGES

I- IDENTIFICATION AND ASSESSMENT OF CLAIM

- 1. Identification of potential claim**
 - a. This usually involves meetings with Chief and Council at the community.
 - b. This could include informal or formal discussions with elders or other members with some knowledge of the issue.
 - c. Potential claim could also be identified during research on another issue.
 - d. At this stage there is already a requirement for funding to support the preliminary identification and assessment of a claim.
- 2. Preliminary Assessment of claim**

- a. Does potential claim might meet criteria for a specific claim or might it be better resolved through some other process?
- b. Should more preliminary research be carried out prior to placing on the research work plan?
- c. In some cases, beneficiary issues, e.g., in the case of splits, amalgamations and transfers, which current First Nation(s) might be involved, need to be addressed. If this is the case, then discussions are required with the affected First Nation(s) to advise them of the issue, explain the potential claim and its possible implications and allow the First Nation(s) to decide what action should be taken.
- d. Assessing the claim's potential route(s) is important and requires funding to do this. Some claims may be submitted to specific claims, but part of the claim may be dealt with in another process, e.g. administrative resolution.
- e. Discuss potential claim with funding officer and get a number assigned

3. Potential Claim Feasibility Report

- a. May involve liaison with legal counsel for purposes of determining the potential for disclosure of an outstanding obligation of the federal crown.
- b. May indicate that there is a basis for a claim: what basis will be.
- c. May indicate there is no basis for a claim and give reasons for finding.
- d. It should be noted that, in either case, some level of detailed research is required to provide First Nation(s) with comprehensive answer on issue.
- e. Present claim feasibility report to First Nation(s).

II. PRELIMINARY RESEARCH

4. Develop general work plan for claim

- a. Preliminary analysis to define research objectives, including review of relevant case law.
- b. Determine whether additional funding is required in order to initiate the project. Consult with Funding Officer on this.
- c. Develop specific research plan based on material reviewed.

5. Preliminary Research

- a. Identify potential sources of information such as archival holdings, provincial and federal government ministries, who should be interviewed, whether relevant land use or status information is available, etc.
- b. If a new or unique issue is uncovered, canvassing other Claims Research Units to determine whether any background research developed may be available for review.
- c. Begin accessing files, collecting information.
- d. Revisions to research plan.

- e. Create database for documents used in claim.
- f. Scan documents or prepare for scanning.

III. **IN-DEPTH RESEARCH**

6. **Collect information**

- a. Continue collecting files and relevant information.
- b. Conduct interviews, if applicable. This could include interviewing community members (Elders, etc.) to gather evidence. Also liaison, preparation of draft questions, community visits, transcribing, translation if necessary, checking reviewing, etc.
- c. Other field work, etc.
- d. Begin processing documents by collating, annotating, entry into database, creating indices, scanning all documents, filing all documents. This activity continues throughout the claim research and writing process as the researcher builds the claim.

7. **Waiting for Information**

- a. Being processed by Archives, INAC, provincial/federal ministry, etc. This can create lengthy delays, as much as 6 -12 months.

8. **Review information for gaps**

- a. Conduct additional research, if necessary.

9. **Analysis**

- a. This involves assessing the information and determining the best approach for arguing the claim before writing begins. If this is a new class of claim that no one else has looked at, it may involve researching and resolving some of the legal issues at this stage.
- b. This may involve extensive genealogical analysis for, e.g., a Treaty Land Entitlement claim.
- c. This may also involve reviewing the general history of the surrounding area, including the historical foundation of the claim in relation to neighbouring First Nations.

10. **Follow Up Research**

- a. This may involve conducting research as requested by legal counsel as per discussion/review.

IV. **WRITE-UP**

11. **Begin writing claim**

- a. May identify additional gaps in research as writing proceeds.

- b. Address gaps by doing additional research into specific subjects in gaps.

12. Final write-up of Researcher/Analyst Draft

- a. Finalize background, history, detail specific issues.
- b. Editing, fact checking, quote checking, etc.
- c. In cases where the claim is developed by a Claims Research Unit, the finished report can go through a review process in which the other researchers will be consulted and will offer suggestions for revisions/additions/deletions etc.
- d. Finalize document production, including digitization/creation/finalizing database, scanning and linking documents.
- e. Presentation research report or follow up report to First Nation(s).

13. *Determination of whether the claim value might exceed \$150 Million.*

V. LEGAL ANALYSIS

NOTE: Consultation with legal counsel may be required at any point in the research and development of a potential specific claim.

14. Legal analysis and research

- a. Identification of legal issues and arguments.
- b. Liaison.
- c. Identification of applicable case law precedent.
- d. Identifying any necessary supplementary research based on legal review. Research may be required to return to Stage III.
- e. Present legal analysis to First Nation.

15. Incorporation of Legal arguments

- a. Adjustment or reorganization of claim to highlight points emphasized by legal arguments; restructuring could include deletion or addition of sections.
- b. Final review of claim by the researcher after incorporation of legal documents and arguments.

16. Final review of submission package

- a. Ensure it meets the Minimum Standard For Filing a Specific Claim Submission.

VI. SUBMISSION TO FIRST NATION

17. Preparation of Draft Claim to First Nation(s)

- a. May involve preparation of a user friendly version of the Claim, including an Executive Summary.
- b. Present draft claim to First Nation(s).

18. Revisions to draft (if necessary)

- a. Could include further research, analysis and write-up.
- b. Could include further legal analysis.
- c. Present revised draft claim to First Nation(s).

19. Preparation of Final Claim to First Nation

- a. Could include community general meeting to answer questions about the claim or provide community with historical information.
- b. Additional revisions.
- c. Present final claim to First Nation(s).

NOTE: It is important to note that at any time during the research and development of a claim, including the legal analysis of the issue, consultation with the First Nation may be required. This stage will be categorized as "Consultation with First Nation" and could occur at any time between Stage I and Stage VI.

VII. SUBMISSION TO SCB

20. Preparation for Submission to SCB

- a. May include preparation of draft BCR for Council consideration to include the mandatory acknowledgments in the submission of specific claims.
- b. May include several meetings over a period of time with Council.
- c. Make additional copy(s) of claim and submit to SCB on behalf of the First Nation.
- d. Present Claim to Minister.

21. Liaison (between First Nation and SCB)

VIII. RESPOND TO SCB

22. *SCB letter of acknowledgment of receipt of First Nation submission*

23. *SCB advises whether Claim Submission meets Minimum Standards*

- a. *May involve additional research by CRU if SCB review identifies possible requirement.*
- b. *May involve additional legal analysis by CRU if SCB review identifies possible requirement.*
- c. *If SCB advises that submission meets Minimum Standards, date of this acknowledgment signifies start of three (3) year period for SCB review of and response on claim regarding acceptance for negotiations.*
- d. *If additional documentary evidence uncovered in SCB review of claim, this material is provided to the First Nation (and affected CRU, if involved.) This could lead to the claim being withdrawn and redrafted for submission to SCB.*
- e. *May be interaction between SCB and CRU between date of formal acceptance*

of claim and response to the claim submission.

- f. *Present updated claim (Minimum Standard) to Minister.*

IX. POST-VALIDATION/REJECTION SUPPORT

- 24. Receipt of Minister's letter (with synopsis of Department of Justice (DOJ) opinion)**
- 25. Clarification (for DOJ Opinion)**
 - a. *May involve meetings with SCB/DOJ to clarify legal arguments.*
 - b. *May involve additional research to write-up clarifying arguments.*
- 26. Assistance to First Nation post-DOJ/ Minister Validation or Rejection of Claim**
 - a. *Prior to the acceptance of offer to negotiate, First Nations may require assistance and/or information from CRU and/or legal counsel.*
 - b. *Could involve additional copying of documents for legal counsel or negotiations or possibly for the Specific Claim Tribunal Process.*
- 27. Possible additional work required to both the historical and legal submissions.**
 - a. *As the Specific Claims Tribunal has not developed and released its rules and procedures, this stage of the process will need to be examined at some future point when this information is released by the Specific Claims Tribunal.*
- 28. Possible additional research or legal work required during the negotiations to expand the scope of negotiations** in cases where allegations were rejected and further research could be useful to the parties or where the lack of evidence will affect the compensation. This additional work can be funded upon agreement of First Nations and Canada, on a as required basis.

NOTE: It is probable that the "IX" stage of the process will include the option of mediation. Although this is undefined as yet, this stage of the process will require adequate funding to provide for First Nation/CRU active participation.

Inactive for various reasons, this may occur at any of the above stages.

X. INACTIVE

- 28. Inactive** – Work on Claim has not commenced
- 29. Inactive** – Work suspended (e.g. priorities changed for specific reasons, like another response came back from SCB unexpectedly and had to address/research issues, questions, First Nation requests suspension of research for various reasons, or assigns higher priority to another claim due to current situation on the ground, etc.) or because the Band does not provide

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direction to the CRU (in this case the claim could be reactivated).

- 30. **Inactive** – Waiting for SCB response
- 31. **Inactive** – Waiting for DOJ response
- 32. **Inactive** – Waiting for provincial response
- 33. **Inactive** – Waiting for Specific Claims Tribunal report
- 34. **Inactive** – No direction from First Nation
- 35. **Inactive** – Other reason, please explain

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