

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

REVISED DRAFT FOR DISCUSSION

Effective as of XX

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1. Introduction

Specific Claims deal with past wrongs committed by the Crown against First Nations. The Government of Canada works with First Nations under the Specific Claims Policy to resolve specific claims through negotiated settlements.

2. Objective

First Nations are responsible for researching their own claims and submitting those claims to Canada. The objective of this contribution funding program is to provide First Nations with financial assistance to support them in researching and developing their claims for consideration under the Specific Claims Policy and Process.

Under the section entitled “Advancing Reconciliation by Settling Specific Claims, Budget 2019 committed \$40.0 million over five years, starting in 2019-2020, to First Nations to help research and develop their claims. This commitment of \$8 million per year for five years was an addition to the \$4 million per year that was already committed to this funding program on an on-going basis.

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.

** 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 are considering a change of mandate must work in collaboration with the Claims Research Units to determine the best approach in order to avoid duplication of work and funding. Continued discussions on potential approaches to better respond to these requests in the future are underway with the Claims Research Units and Negotiation Support Directorate Working Group.

4. Application Deadline

The deadline to submit a proposal for research funding is **January 31 of each fiscal year** or the next business day where January 31 falls on a weekend or statutory holiday (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.

5. Eligible Activities and Expenditures

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;
- **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.

Other eligible expenditures are those associated with the planning and delivery of the National Claims Research Workshop, as well as those supporting the participation of CRUs and Nations in the Annual Research Directors meeting. These events provide opportunity to support the capacity, connectedness, and effectiveness of the claims research community. Eligible expenditures may include, but is not limited to: room and equipment rentals, salaries and wages, honoraria, professional services, travel costs within the Treasury Board Secretariat's guidelines as specified in the Travel Directive in effect at the time of travel, administrative and reporting costs, and communication products.

Consistent with the Department's collaborative approach to specific claims resolution, **an eligible recipient** can also seek research funding after a claim is submitted **when the eligible recipient** determines through engagement with the Specific Claims Branch that additional research activities could assist in the assessment of the claim by addressing evidentiary gaps or clarifying matters under consideration.

The *Stages of Specific Claims Research for Measurable Progress* paragraph 27 includes activities undertaken after a First Nation receives a letter indicating whether Canada is in a position to negotiate the claim or not. These activities could include historical, anthropological, ethnographic, oral history research and corresponding legal work). Consistent with the Department's collaborative approach to specific claims resolution, these activities would be intended to build

a common understanding of the claim, expand the scope of the claim, or resolve an issue that is rooted in the history which could affect the settlement. Examples of claims where this could apply are:

- Claims partially accepted;
- Claims where the strength of claim and a lack of evidence will affect compensation; or
- Claims where there is a beneficiary issue which complicates settlement.

Specific Claims Branch is not involved in the administration of funding proposals. However, for collaborative approaches to Specific Claims resolution, the Negotiation Support Directorate will ask the Branch to confirm that the workplan received supports additional research that the eligible recipient and the Branch have identified as useful in supporting further development of the claim. These discussions will help inform the scope of the project and how best to support it.

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> (LINK TO BE UPDATED ONCE AVAILABLE).

Activities associated with the costs of litigation and Specific Claims Tribunal are also not eligible. 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 amount 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 (up to \$40,000 per active claim).

Funding is provided for claims that are actively being researched and progress reported as per the *Stages of Specific Claims Research for Measurable of Progress*.

8. Determination of the Amount of Funding and Stacking

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);
- application of maximum amount per active claim and benchmark & rates; 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.

9. Application Process

Applications for the research, development and submission of Specific Claims 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 band council resolution (BCR) (or other means of mandate given) for any First Nation that has requested an organization to conduct research for a new specific claim on its behalf;
- 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 council resolution (BCR) 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.

Application for funding to support the planning and hosting costs of the National Claims Research Workshop, and travel costs for delegates to attend, and Annual Research Directors meeting must be submitted to Negotiation Support Directorate by the hosting community or hosting Claims Research Unit along with a proposed date and location, estimated number of participants and budget by January 31 of each fiscal year.

Application for funding to support the costs of the Claims Research Units and Nations, involved in claims process, to participate in the Annual Research Directors meeting should be included in their annual proposals along with an estimated budget.

As of July 16, 2021

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

Continued discussions on potential approaches to improve the funding application process for the research, development and submission of specific claims in the future are underway with the Claims Research Units and Negotiation Support Directorate Working Group.

10. 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.

11. 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.

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. FOLLOWING MINISTER'S DECISION LETTER

24. **Receipt of Minister's letter to explain Canada's decision to accept or reject the Claims**
25. **Clarification**
 - a. *May involve meetings with SCB/DOJ to clarify legal considerations*
26. **Assistance to First Nation After Minister's Letter Advising Whether Canada Wishes to Negotiate the Claim**
 - a. *Prior to a First Nation accepting Canada's offer to negotiate, a First 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.**

NOTE: In some cases "IX" stage of the process may include the option of mediation. Activities associated with the costs of litigation and Specific Claims Tribunal are not eligible under the Specific Claims Research, Submission, and Development Program.

X. INACTIVE

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

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 direction to the CRU (in this case the claim could be reactivated).
30. **Inactive** – Waiting for SCB response

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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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Annex B – Annual/Multi-year Work plan and Budget templates – *To be added*

Annex C - Progress Report - *To be added*

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