

# Terms of Reference for Funding Decisions of the Human Rights Expert Panel

*(Current as of 1 January 2023)*

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## **1. PROGRAM OBJECTIVES**

- 1.1. Provide financial support to help Canadians gain access to the courts for the litigation of test cases of national significance; and
- 1.2. Help assert and clarify certain constitutional and quasi-constitutional official language rights and human rights in Canada.

## **2. ROLE AND RESPONSIBILITIES OF THE EXPERT PANELS**

- 2.1. To ensure that the cases funded by the Program are chosen independently, decisions regarding Program funding are rendered by two independent expert panels: an Official Language Rights Expert Panel and a Human Rights Expert Panel.
- 2.2. The expert panels are independent of the Minister of Canadian Heritage and report only to the University of Ottawa.
- 2.3. Members of the expert panels observe the policies and rules of operation adopted by their panel.
- 2.4. Members of the Human Rights Expert Panel assess the merits of each case and approve only cases that can further the Program's objective of clarifying rights while ensuring compliance with the eligibility criteria, the terms of reference and the Program's terms.
- 2.5. Funding decisions are the exclusive responsibility of the expert panels.
- 2.6. The expert panels undertake to make funding decisions with transparency, integrity, independence and objectivity.

## **3. ROLE AND RESPONSIBILITIES OF CCP STAFF TOWARD THE EXPERT PANELS**

- 3.1. Provide administrative support to the expert panels.
- 3.2. Receive funding applications, analyze applications in accordance with the eligibility criteria established by the expert panel in charge of the decision, and present a recommendation to the expert panel.
- 3.3. Execute a funding agreement with each applicant approved for funding, hereafter referred to as the recipient.
- 3.4. Issue payments in the amounts approved by the expert panels.
- 3.5. Manage recipients' files, including ensuring that they submit their reports, and approve recipients' expenses and the reimbursement of their expenses.

#### **4. CONFLICT OF INTEREST POLICY**

- 4.1. The members of the Human Rights Expert Panel will perform their duties honestly and in accordance with the highest standards in order to avoid real, potential or apparent conflict of interest and to maintain and increase public confidence. There is a conflict of interest where there is a serious risk, real or perceived, that the personal interests of a member of the Expert Panel will negatively impact their ability to exercise their duties with the CCP.
- 4.2. In performing their duties, the members of the Expert Panel will not:
  - 4.2.1. Act in a manner that favours their personal interests, a group or a community, or that unduly favours the interests of any other person or entity;
  - 4.2.2. Use their position to influence the decision of another person in a manner that favours their personal interests, a group or a community, or that unduly favours the interests of any other person or entity; or
  - 4.2.3. Use or disclose information that they obtain in the performance of their duties and which are not generally available to the public to favour their personal interests, a group or a community, or unduly favour the interest of any other person or entity.
- 4.3. A member of the Expert Panel will disclose, as soon as possible, verbally or in writing, the nature of any personal interest they have with regard to any issue dealt with by the CCP. This undertaking is ongoing at all times during the member's term with the CCP.
- 4.4. A member of the Expert Panel who is an employee, a stakeholder, or who has received a benefit directly or indirectly, through a contract or sub-contract signed with an individual, an organization or a law firm making an application to the CCP, will follow the following steps when the Expert Panel is studying the application:
  - 4.4.1. Disclose to the Expert Panel their link with the individual, the organization or law firm making a funding application to the CCP;
  - 4.4.2. The Expert Panel will discuss the situation and determine if there is a conflict of interest;
  - 4.4.3. Should the Expert Panel determine that there is a real, potential or apparent conflict of interest, the member will:
    - 4.4.3.1. Refrain from participating in discussions regarding the funding application; and
    - 4.4.3.2. Desist from voting on the funding application.

#### **5. HUMAN RIGHTS EXPERT PANEL DECISION-MAKING METHOD AND PROCESS**

- 5.1. Funding applications are received and analyzed by CCP staff.

- 5.2. Funding applications and their analyses are made available to members of the Expert Panel through the LiquidFiles interface two weeks before the Expert Panel meets.
- 5.3. Every funding application and its analysis are presented to the Human Rights Expert Panel at the panel meeting by the legal counsel responsible for the analysis of the application.
- 5.4. The members will deliberate on each funding application in light of the eligibility criteria to determine whether funding is granted. The members will consider the budgetary limits of the CCP fiscal year in their decision-making.
- 5.5. The decision to grant or not to grant funding is made by a majority of the members present at the meeting.
- 5.6. The decision, with reasons, is moved, adopted and recorded in the minutes of the meeting of the Expert Panel.
- 5.7. Expert Panel decisions are final and without appeal.
- 5.8. Applicants may re-apply for funding if there has been a significant change in circumstances or if there is new information that was not reasonably available at the time of the first application.

## **6. MAXIMUM FUNDING GRANTED TO RECIPIENTS**

- 6.1. The Expert Panel cannot grant more than the following maximum amounts per funding category:
  - 6.1.1. Development of test cases: \$20,000
  - 6.1.2. Litigation
    - 6.1.2.1. Trial<sup>1</sup>: \$200,000
    - 6.1.2.2. Motion for leave to appeal: \$10,000
    - 6.1.2.3. Appeal: \$50,000
  - 6.1.3. Legal Interventions
    - 6.1.3.1. Request for leave to intervene: \$10,000
    - 6.1.3.2. Intervention: \$35,000
  - 6.1.4. Accessibility: \$5,000
- 6.2. Any funding received to develop a test case, other than accessibility funding, will be deducted from the maximum amount available for litigation.
- 6.3. In most situations, the amount granted to a funding applicant by the Human Rights Expert Panel will be the amount requested by the applicant, subject to the maximum amount set out in paragraph 6.1.

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<sup>1</sup> In exceptional circumstances, funding recipients pursuing litigation cases at the trial level may apply for and be granted extraordinary funding of up to \$50,000. See section 5 of the *Human Rights Funding Guidelines*.

- 6.4. The Expert Panel may grant an amount less than the amount requested by the applicant. The recipient will be provided with reasons for the reduced amount of funding. Unless otherwise stated by the Expert Panel, this provision does not prevent the funding recipient from submitting an application for additional funding, if necessary.

## **7. REVIEWING FILES IN WHICH FUNDING HAS BEEN GRANTED**

- 7.1. Where the circumstances require that CCP staff request that the Expert Panel review funding granted to a recipient, the Expert Panel will review the request, along with any explanatory documents provided by the recipient, at their next scheduled meeting.
- 7.2. The Expert Panel has the sole discretionary power to make decisions about reviewing the funding granted by the CCP, including but not limited to the following, when necessary:
- 7.2.1. Issuing a directive to the funding recipient;
  - 7.2.2. Reducing the amount of funds available for the remainder of the file;
  - 7.2.3. Ordering that the funding be revoked and that the recipient return any unused funds;
  - 7.2.4. Ordering that the funding be revoked and that the recipient return the total amount granted by the CCP; or
  - 7.2.5. Any other reasonable and appropriate measure required to maintain the integrity and fulfil the objectives of the CCP.