

Terms of Reference Funding Decisions Official Language Rights Expert Panel

(Current to 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 committee.
- 2.4. Members of the Official Language 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 that the eligibility criteria, the terms of reference and the Program's terms are complied with.
- 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 approving recipients' expenses and the reimbursement of their expenses.

4. CONFLICT OF INTERESTS POLICY

- 4.1. The members of the Expert Panel act in the public interest and 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 in their integrity, as well as respect and public confidence in the Expert Panel.
- 4.2. Members of the Expert Panel will perform their duties and arrange their private affairs in a manner that will bear the closest public scrutiny. Members shall therefore take steps in their private affairs to avoid real or apparent conflicts of interest that are foreseeable and shall manage them in a manner that protects the public interest.
- 4.3. Members of the Expert Panel must demonstrate to the public that they uphold standards that put the public interest ahead of their personal interests and the Expert Panel must provide clear rules to its members on how to reconcile their personal interests with their official duties.
- 4.4. In the performance of their duties, members of the Expert Panel shall not act in a way that promotes their personal interests, those of a group or community, or the interests of any other person or entity in a way that might reasonably be regarded as compromising their personal judgment or integrity.
- 4.5. In order to avoid conflicts of interest, real or apparent, the members of the Expert Panel will not:
 - 4.5.1. 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.
 - 4.5.2. 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, those of a group or a community, or unduly favour the interest of any other person or entity.
 - 4.5.3. Disclose such information if they know, or ought reasonably to know, that it may be used to further their personal interests, those of a group or community, or unduly further the interests of any other person.
 - 4.5.4. Participate in the discussion of any matter in which they have a pecuniary interest.
 - 4.5.5. Vote on any matter in which they have a personal interest.
 - 4.5.6. Take any action the effect of which is to circumvent the obligations set out in this policy on conflicts of interest.
- 4.6. A member of the Expert Panel will promptly disclose, verbally or in writing, the nature of any personal interest in any matter dealt with by the CCP. If Expert Panel members subsequently become aware of any personal interests that should have been disclosed, they shall promptly disclose them in the required manner.

4.7. 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 law firm applying to the CCP, will follow the following steps when the Expert Panel is deciding the application:

4.7.1. Disclose to the Expert Panel their link with the individual, the organization or legal firm making an application to the CCP;

4.7.2. Abstain from participating in any discussions of that application; and

4.7.3. Abstain from voting on the funding of that application.

5. OFFICIAL LANGUAGE 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 one week before the Panel meets.

5.3. Every funding application and its analysis is presented to the Official Language Rights Expert Panel at the Expert Panel meeting by the legal counsel responsible for the analysis of the application.

5.4. The members deliberate each funding application according to the eligibility criteria to determine whether funding will be granted. In making their decision, the members consider the budgetary limits of the CCP fiscal year.

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. The Expert Panel's decisions are final and without appeal.

5.8. An applicant 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

Trial ¹	\$150,000
Application for leave to appeal	\$15,000
Appeal	\$50,000

6.1.3. Legal interventions

Application for leave to intervene	\$10,000
Intervention	\$40,000

6.1.4. Accessibility funding \$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 Official Language Rights Expert Panel will be the amount requested by the applicant, subject to the maximum amount given in paragraph 6.1.

6.4. The Expert Panel may grant an amount lesser 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, should it be necessary.

7. REVIEWING FILES IN WHICH FUNDING HAS BEEN GRANTED

7.1. Where the circumstances require CCP staff to request that the Expert Panel review funding granted to a recipient, the Expert Panel will review the request, along with any explicative 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:

- 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.

¹ 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 *Official Language Rights Funding Guidelines*.