

# Funding Guidelines Official Language Rights

*(Current as of 15 December 2024)*

## Table of Contents

1. Maximum funding.....	2
2. Effective date of funding .....	2
3. Approved budget.....	3
4. Additional funding .....	3
5. Extraordinary funding.....	3
6. Review of funding .....	4
7. Eligible expenses and maximum billable amount .....	4
8. Timelines .....	6
9. Submission of invoices to the CCP .....	6
10. Reporting to the CCP.....	7
11. Holdback amounts .....	8

These funding guidelines set out conditions related to funding granted by the Official Language Rights Branch of Court Challenges Program (“the CCP”). These guidelines form part of the funding agreement between recipients and the CCP and all Official Language Rights Branch funding recipients are required to follow these guidelines.

## 1. Maximum funding

1.1. The CCP’s Official Language Rights Expert Panel has established the following maximum amounts that may be granted in each funding category:

1.1.1. **Test Case Development** \$20,000

1.1.2. **Litigation**

Trial	\$150,000
Application for leave to appeal	\$25,000
Appeal	\$60,000

1.1.3. **Legal interventions**

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

1.1.4. **Accessibility funding** \$5,000

Any request for accessibility funding must be made in writing and must include:

- a) A detailed explanation of the request; and
- b) A projected budget for the amount of accessibility funding requested.

1.2. If a recipient has received funding to develop their test case and subsequently applies for litigation funding, the amount granted to develop the test case will be deducted from the maximum amount available for litigation. This provision only applies to applications made after December 16, 2019.

1.3. The maximum amounts provided for litigation and legal interventions are applied separately to each level of judicial proceedings. Accordingly, separate applications for funding must be submitted for each judicial level. However, interlocutory appeals arising in litigation funded at the trial level will not generally be eligible for appeal funding, unless the interlocutory appeal raises an independent and distinct official language rights issue. Expenses related to interlocutory appeals will usually be eligible for reimbursement from the trial funding envelope.

1.4. In general, a single envelope of litigation – trial funding will be allocated for all levels of administrative proceedings, including first-level judicial review, up to the point at which such proceedings reach a court of appeal.

## 2. Effective date of funding

2.1. Only expenses incurred following the submission of the funding application will be reimbursed. As such, funding recipients may only request reimbursement of expenses incurred on or after the date on which the CCP received the funding application.

**2.2.** Where circumstances justify doing so, the Expert Panel has the discretionary power to set a different effective date of funding. To do so, the following conditions must be met:

- a) The applicant must submit a written request for an alternative effective date of funding; and
- b) The applicant must demonstrate that the circumstances justify an effective date of funding other than the date on which the CCP received the funding application.

### **3. Approved budget**

The CCP acknowledges that the approved budget contains an estimate of costs and that actual costs may differ. Funding applicants must disclose all other expected sources of funding, whether contributions in cash or in kind, including funding from any level of government, for all case-related activities undertaken by the applicant.

### **4. Additional funding**

**4.1.** In all funding categories, recipients who initially received an amount less than the maximum for the category in question (see section 1, “Maximum funding”) and who, during the course of the project, encounter needs requiring greater financial resources, may apply for additional funding.

**4.2.** The following conditions must be met when submitting an application for additional funding:

- a) The submissions must include a detailed explanation of the reasons for the request;
- b) The file must be up to date, both with respect to the state of incurred expenses and the obligations under the funding agreement; and
- c) A revised budget justifying the additional amount requested must be attached.

**4.3.** Any modification to the total amount of funding granted must be approved by the Expert Panel.

### **5. Extraordinary funding**

**5.1.** In the context of litigation – trial funding, recipients who were granted the maximum for that category (see section 1.1.2) and who, during the course of the case, encounter exceptional circumstances requiring greater financial resources, may apply for extraordinary funding up to a maximum of \$50,000.

**5.2.** Exceptional circumstances in this category of funding refer to extraordinary and unexpected steps in the course of litigation that have become necessary in order for the matter to be pursued for the purposes for which it was funded.

**5.3.** The following conditions must be met when submitting an application for extraordinary funding:

- a) Expenses incurred in the file and approved by the CCP must have reached or exceeded \$100,000;
- b) The file must be up to date, both with respect to the state of incurred expenses and the obligations under the funding agreement;

- c) A completed extraordinary funding application form and revised budget must be submitted to the CCP; and
- d) The application must include a detailed explanation of the reasons for the request, including the exceptional circumstances and the need for extraordinary funding to pursue the funded matter.

**5.4.** Allocations of extraordinary funding must be approved by the Expert Panel, which may, in its discretion, grant a lower amount than the amount requested by the recipient.

**5.5.** A recipient may apply for and be granted extraordinary funding more than once, if the circumstances justify doing so. In no circumstances may the total amount granted in the course of a funded litigation – trial file exceeds \$300,000.

## **6. Review of funding**

**6.1.** CCP staff may request that the Expert Panel conduct a review of funding previously granted to a recipient when it considers that:

- 6.1.1. The case no longer meets the eligibility criteria;
- 6.1.2. The recipient has failed to comply with the funding agreement or the funding guidelines; or
- 6.1.3. The recipient has failed to comply with funding conditions imposed by the Expert Panel.

**6.2.** Should CCP staff request that the Expert Panel conduct a review of funding, the following provisions apply:

- 6.2.1. CCP staff will notify the recipient of the request for review and the reasons for the request;
- 6.2.2. CCP staff will provide the recipient with a reasonable amount of time to respond in writing to the CCP's concerns; and
- 6.2.3. The recipient's written response will be forwarded to the members of the Expert Panel before they consider the request for review.

**6.3.** The CCP may freeze funding and suspend the reimbursement of expenses in the funded matter until the Expert Panel has had the opportunity to consider the request for review of funding. In such a case, CCP staff will advise the recipient that these steps have been taken when providing them with notice of the request for review.

**6.4.** Once the Expert Panel has considered the request for review and the recipient's response, they may decide in accordance with their Terms of Reference. Their decision may include, but is not limited to, directing the recipient to act in accordance with the conditions attached to the funding or to return all unused funds to the CCP.

## **7. Eligible expenses and maximum billable amount**

**7.1.** For the **development of test cases** that have the potential to assert and clarify rights covered by the CCP, expenses eligible for reimbursement include:

- 7.1.1. Costs related to legal research and drafting;
- 7.1.2. Consultation; and

- 7.1.3. Evidence development.
- 7.2. For **litigation** cases that have the potential to assert and clarify rights covered by the CCP, expenses eligible for reimbursement include:
- 7.2.1. Legal fees;
  - 7.2.2. Research and drafting costs; and
  - 7.2.3. Other costs related to presenting the case in court.
- 7.3. For **legal interventions** that have the potential to assert and clarify rights covered by the CCP, expenses eligible for reimbursement include:
- 7.3.1. Legal fees;
  - 7.3.2. Research and drafting costs;
  - 7.3.3. Consultation; and
  - 7.3.4. Other costs related to presenting arguments in court.
- 7.4. In the case of **accessibility funding**, the CCP can only reimburse costs related to ensuring equal access to Program-funded activities, which include, for example:
- 7.4.1. Interpretation or translation;
  - 7.4.2. Production of documents in alternate media;
  - 7.4.3. Travel costs for an attendant; and
  - 7.4.4. Childcare costs.
- 7.5. The following are examples of the types of fees the CCP may reimburse:
- 7.5.1. **Legal fees or expenses**, including expenses related to legal research, evidence development, communications with the client, other parties, or the CCP, communication with external consultants or experts, preparation of legal documents to be filed in court, preparation for court appearances, court appearances, and the drafting of court orders;
  - 7.5.2. **Disbursements**, including disbursements prescribed by law or regulation, transcription expenses, costs related to the service or filing of documents, interpretation and translation costs, photocopies, mail, courier, and long-distance telephone calls;
  - 7.5.3. **External fees**, including fees for an external consultant, expert witnesses, and expert reports; and
  - 7.5.4. **Administrative fees**, including lawyer or recipient travel expenses, lawyer or recipient accommodation expenses, and witness expenses. Unless otherwise authorized in advance by the CCP, such expenses are only eligible for reimbursement to attend a hearing for which attendance in person is necessary.
- 7.6. The CCP has set the maximum billable rate for which the recipient may seek reimbursement at \$250 an hour before tax, per professional.
- 7.7. The CCP may only reimburse travel-related expenses in accordance with its Guidelines on Travel Expenses. The CCP does not reimburse lawyers' or consultants' time spent travelling.

- 7.8. The CCP may reimburse the time of a funding recipient or of a recipient's legal employee if the recipient demonstrates that the recipient or the employee is not paid from another funding source and that the expenses are essential to the CCP-funded activity. No individual or organization may derive a financial benefit from having received CCP funds.
- 7.9. The CCP does not reimburse any expenses associated with the preparation or submission of funding applications.
- 7.10. The CCP does not reimburse any expenses associated with activities related to public education, community development, lobbying, political advocacy, or media.
- 7.11. All other expenses will be evaluated on a case-by-case basis.
- 7.12. All expenses, in order to be eligible for reimbursement from CCP funds, must be reasonable in the context of the funded matter.

## **8. Timelines**

### **8.1. Test case development**

Recipients must complete the development of their test case within twelve (12) months of signing the funding agreement, unless an extension of time is granted by the Expert Panel. Any request for an extension of time must be made in writing to the CCP.

### **8.2. Litigation**

Recipients must ensure that court proceedings are initiated regarding the CCP-funded matter within twelve (12) months of signing the funding agreement, if a case has not already been filed, unless an extension of time is granted by the Expert Panel. Any request for an extension of time must be made in writing to the CCP.

## **9. Submission of invoices to the CCP**

- 9.1. Funds granted by the CCP are to be deposited into the trust account of the recipient's lawyer and may not be withdrawn until the CCP has authorized a disbursement in writing.
- 9.2. The CCP will only approve the disbursement of funds from the trust account once staff has received the following documents and proof of eligible expenses:
  - 9.2.1. A completed CCP invoice form, including the categories of eligible expenses; and
  - 9.2.2. Proof that the expense was incurred, which may include:
    - 9.2.2.1. An invoice for services rendered, prepared by a lawyer or consultant, indicating the types of eligible expenses;
    - 9.2.2.2. A copy of travel expense receipts consistent with the Treasury Board's Travel Directive (see the CCP's Guidelines on Travel Expenses); or
    - 9.2.2.3. A copy of the invoice or receipt for any other expense related to presenting the case in court.

## 10. Reporting to the CCP

### 10.1. Test case development

#### 10.1.1. Progress reports

If a recipient has been granted an extension of time to develop their test case pursuant to section 8.1, a progress report will be due every six (6) months from the date of the Expert Panel's decision to grant an extension of time. Reports must contain a summary of work accomplished since funding was approved or since the last progress report. Reports must also contain sufficient information to enable the CCP to assess progress made in developing the test case, as well as a timeline for next steps.

#### 10.1.2. Final reports

10.1.2.1. Recipients must submit two final reports to the CCP at the end of the case: the final activities report and the final financial report.

10.1.2.2. The **final activities report** must be prepared using the CCP's final activities report form. It must contain a summary of all work done on the funded matter since the last progress report. It must also specify the result of the test case development in detail, including whether the recipient intends to pursue the matter before the courts. A copy of any document produced using CCP funds while developing the test case must be included with the report.

10.1.2.3. The **final financial report** must be prepared using the CCP's final financial report form. The report must indicate the total actual expenses incurred and provide updated information on funds received from any other source, whether in cash or in kind, including funding from any level of government, for any activity undertaken by the recipient related to the CCP-funded matter.

10.1.2.4. The portion of funding subject to a holdback will not be released until the final reports are submitted and approved by the CCP. (See section 11, "Holdback amounts").

### 10.2. Litigation and legal interventions

#### 10.2.1. Progress reports

Progress reports must be submitted by the recipient every twelve (12) months using the CCP progress report form. The first progress report must be submitted within twelve (12) months of the date on which the recipient signed the funding agreement. Reports must contain a summary of work done since funding was approved or since the last progress report. Reports must also contain sufficient information to enable the CCP to assess progress made in the case.

If a recipient fails to submit a progress report within these timeframes, the CCP reserves the right to withhold approval of any invoices submitted by the recipient until the CCP receives the progress report.

#### 10.2.2. Final reports

10.2.2.1. Recipients must submit two final reports to the CCP at the end of the case: the final activities report and the final financial report.

- 10.2.2.2. The **final activities report** must be prepared using the CCP's final activities report form. It must contain a summary of work done on the CCP-funded matter since the last progress report. It must also provide a detailed account of the results of the case. A copy of any decision rendered by a court or tribunal, any settlement agreement, and any other final document concerning the case must be included with the report.
- 10.2.2.3. The **final financial report** must be prepared using the CCP's final financial report form. The report must indicate the total actual expenses incurred and provide updated information on funds received from any other source, whether in cash or in kind, including funding from any level of government, for any activity by the recipient related to the CCP-funded matter.
- 10.2.2.4. The portion of funding subject to a holdback will not be released until the final reports are submitted and approved by the CCP. (See section 11, "Holdback amounts").

## **11. Holdback amounts**

- 11.1. The CCP may withhold part of the funding for a file until it is satisfied that the recipient has complied with all of the funding conditions and these funding guidelines, in accordance with section 6, "Review of funding".
- 11.2. The Expert Panel may, in exceptional circumstances, permit different holdback amounts where there is a demonstrated need for the recipient to access funds prior to the completion of the case. Such a decision by the Expert Panel must be provided to the recipient in writing.

### **11.3. Accessibility funding**

The CCP will not hold back any amount of accessibility funding.

### **11.4. Test Case Development**

Until the development of the test case is completed and the final reports have been received and approved by the CCP, 25% of the total amount granted by the CCP will be held back in the trust account.

### **11.5. Litigation**

- 11.5.1. Until the hearing of the case has concluded or, for an application for leave to appeal, the leave application has been decided, 25% of the total amount granted by the CCP will be held back in the trust account.
- 11.5.2. Until the case is completed and the final reports (including the court's decision or a settlement agreement or any other final document resulting from the case) have been received and approved by the CCP, 5% of the total amount granted by the CCP will be held back in the trust account.

### **11.6. Legal interventions**

- 11.6.1. Until the hearing of the intervention has concluded or, for an application for leave to intervene, the leave application has been decided, 25% of the total amount granted by the CCP will be held back in the trust account.



- 11.6.2. Until the intervention is completed and the final reports (including the court's decision and any other final document resulting from the intervention) have been received and approved by the CCP, 5% of the total amount granted by the CCP will be held back in the trust account.