

Funding Guidelines

Official Languages

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

1. Maximum funding

1.1. The CCP’s Official Languages Expert Panel has established a scale of maximum amounts that may be granted in each funding category:

1.1.1. **Development of test cases** \$15,000

1.1.2. Litigation

Trial	\$125,000
Motion for leave to appeal	\$10,000
Appeal	\$35,000

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 presented at each judicial level.

2. Effective date of funding

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

2.2. Only the expert panel in charge of the funding application has the discretionary power to set another effective date of funding and the following conditions must be met:

- a) The Applicant must make a written request for an alternate effective date of funding; and
- b) The Applicant must demonstrate that the circumstances require a 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 proposed sources of funding, whether contributions in cash or in kind, including any funding from all levels of government, towards any activity targeted by the applicant that concerns the case funded by the CCP.

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, up to the set maximum.
- 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; and
 - b) A draft budget for 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 trial category of the litigation branch of funding, recipients who were granted the maximum for the category in question (see section 1, "Maximum funding") and who, during the course of the test 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 refers to extraordinary and unexpected steps in the course of litigation that have become necessary to permit 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) The recipient's expenses incurred in the file and approved by the CCP must have reached or exceeded \$100,000;
 - b) A completed extraordinary funding application form and budget must be submitted to the CCP; and
 - c) The submissions 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. Any allocation of extraordinary funding must be approved at the discretion of the Expert Panel.

6. Review of funding

- 6.1. CCP staff may request that the Expert Panel in charge of the funding application review the funding previously granted to a recipient when:
 - 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 the funding conditions imposed by the expert panel.
- 6.2. Should the CCP staff request that the expert panel review the funding, the following provisions apply:
 - 6.2.1. The CCP staff will notify the recipient of the request for review and the reasons for the request;
 - 6.2.2. The CCP staff will provide the recipient with a reasonable amount of time to respond to the CCP's concerns and the recipient will be invited to do so in writing; and
 - 6.2.3. The recipient's written response will be forwarded to all members of the expert panel before they examine the request for review.
- 6.3. The CCP may freeze the funds and suspend the reimbursement of expenses until the expert panel has had the opportunity to review the request for review of funding. In this case, CCP staff will advise the recipient of these steps when providing them with the notification of the request for review.
- 6.4. Once the expert panel has examined the request for review and the recipient's response, they may make a decision 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 related to funding or to remit 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 that are eligible for reimbursement include the following:
 - 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 that are eligible for reimbursement include the following:
 - 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 that are eligible for reimbursement include the following:
 - 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. Child care costs.
- 7.5. The following are examples of the types of fees the CCP may reimburse:
- 7.5.1. **Legal fees**, including legal research, preparation of evidence, communications with the client, other parties or the CCP, communications with outside consultant or expert, preparation of documents to be filed in court, preparation for court appearances, litigation fees, such as court appearances at trial or hearings, preparation of court orders;
 - 7.5.2. **Disbursements**, including disbursement prescribed by law or regulations, transcription expenses, costs related to the service of documents, interpretation and translation costs; photocopies, mail, courier, telephone calls;
 - 7.5.3. **External fees**, including external consultant fees (external legal counsel, strategist, communication, etc.); expert witnesses and expert reports; and
 - 7.5.4. **Administrative fees**, including lawyer or client travel expenses; lawyer or client accommodation expenses; witness expenses.
- 7.6. The CCP has set the maximum billable amount for which the recipient may apply for reimbursement at \$250 an hour before tax, per professional.
- 7.7. The CCP may only reimburse travel expenses in accordance with its Guidelines on Travel Expenses. The CCP does not pay for lawyers' or consultants' time spent travelling.
- 7.8. The CCP may pay for the time of recipients or in-house legal counsel employed by recipients who are licensees in good standing with a law society in Canada, if the recipient can demonstrate that the funds are essential to the activity for which they have been approved for funding. No individual or organization may incur a financial benefit from the receipt of CCP funds.
- 7.9. The CCP does not reimburse any costs associated with the preparation of an application for funding.
- 7.10. The CCP does not reimburse any costs associated with activities related to public education, community development, lobbying, political advocacy, or media.
- 7.11. Any other expense will be evaluated on a case-by-case basis.

8. Timelines

8.1. Development of test cases

Recipients must complete the development of their test case within twelve months of signing the funding agreement, unless an extension of time is granted by the expert panel. Any such request for an extension of time must be done in writing to the CCP.

8.2. Litigation

Recipients must ensure that an application with regard to the matter funded by the CCP is formally submitted to the court within twelve calendar months following the signature of this funding agreement, if the case has not already been initiated, unless an extension of time is granted by the expert panel. Any such request for an extension of time must be done in writing to the CCP.

9. Submission of invoices to the CCP

9.1. Funds granted by the CCP are deposited in the trust account of the recipient's lawyer and must not be withdrawn until the CCP has expressly authorized the disbursement.

9.2. The CCP will only approve the disbursement of funds from the trust account once it has received the following proof of expenses and accompanying documents:

9.2.1. A completed CCP invoice form, including the categories of eligible expenses; AND

9.2.2. Proof of the expense, which may include:

9.2.2.1. An invoice for services rendered, prepared by the lawyer or a consultant, that must show the types of eligible expenses;

9.2.2.2. A copy of receipts for travel costs in accordance with the Travel Directive of the Treasury Board of Canada (see CCP Guidelines on Travel Expenses); or

9.2.2.3. A copy of the invoice or receipt for any other cost related to presenting the case in court.

10. Reporting to the CCP

10.1. Development of test cases

10.1.1. Progress reports

In the event that a recipient has been granted an extension of time to develop their test case, pursuant to section 7.1, a progress report will be due every six 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 progress report and the final financial report.

- 10.1.2.2. The **final progress report** must be completed using the CCP's final report form. It must contain a summary of all work undertaken or completed since the last progress report. It must also specify the outcome of the development of the test case in precise detail, including whether the recipient intends to pursue the matter before the courts. A copy of any document produced using the CCP funds in the context of developing the test case must accompany the report.
- 10.1.2.3. The **final financial report** must be completed using the CCP's final financial report form. The report indicates the total actual expenses incurred and provides updated information on funds from all other sources, whether contributions in cash or in kind, including any funds from any level of government, towards any activity targeted by the recipient that concerns the case funded by the CCP.
- 10.1.2.4. The last portion of funding will not be paid or released until the final reports and other documents requested in the final progress report are submitted (see section 10, "Holdback amounts").

10.2. Litigation and legal interventions

10.2.1. Progress reports

Progress reports must be submitted by the recipient every twelve months using the CCP progress report form. The first progress report must be submitted within the twelve months of the date on which the recipient signed the funding agreement. 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 the case.

If a recipient fails to deliver a progress report within these timeframes, the CCP reserves the right to withhold payment of 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 progress report and the final financial report.
- 10.2.2.2. The **final progress report** must be completed using the CCP's progress report form. It must contain a summary of work accomplished in the case funded since the last progress report. It must also specify the results of the case in precise detail. A copy of every decision rendered by a court, any agreement, and any other final document concerning the case must accompany the report.
- 10.2.2.3. The **final financial report** must be completed using the CCP's final financial report form. The report indicates the total actual expenses incurred and provides updated information on funds from all other sources, whether contributions in cash or in kind, including costs awarded

and any funds from any level of government, towards any activity targeted by the recipient that concerns the case funded by the CCP.

- 10.2.2.4. The last portion of funding will not be paid or released until the final reports and other documents requested in the final progress report are submitted (see section 10, "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 observed all the conditions of the funding and has complied with these funding guidelines, in accordance with provision 5, "Review of funding".

11.2. The expert panel in charge of the application may issue, in exceptional circumstances, different holdback amounts where there is a demonstrated need for the recipient to access the 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. Development of test cases

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, in the event of an application for leave to appeal, that 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 negotiated agreement and 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, in the event of a request for leave to intervene, that 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 legal 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.