

FEDERAL COURT

BETWEEN :

THE INFORMATION COMMISSIONER OF CANADA

Applicant

- and -

THE MINISTER OF INDUSTRY

Respondent

PUBLIC AFFIDAVIT OF PETER DI GANGI
IN SUPPORT OF AN APPLICATION FOR REVIEW
(DI GANGI AFFIDAVIT NO. 2)

I, Peter Di Gangi, of the City of Ottawa, SWEAR THAT:

1. I am Director of the Algonquin Nation Secretariat (hereinafter "ANS") since 1997 and as such I have knowledge of the matters herein deposed to, except where indicated to be based on information and belief, in which case I believe them to be true.

2. I have conducted historical research in relation to the comprehensive land claims of the Wolf Lake First Nation, the Barriere Lake First Nation, and the Timiskaming First Nation.

3. As indicated in paragraph 21 of my affidavit sworn on February 20, 2004, the Department of Indian Affairs and Northern Development ("DIAND") funds research undertaken to develop Specific and Comprehensive claims in accordance with the federal government's native claims policies. Attached to my affidavit as Exhibit "1" is a copy of the Native Claims Contributions Funding Guidelines for the year 2000. Attached to my affidavit as Exhibit "2" is a copy of the Native Claims Contributions Funding Guidelines for the year 2001 and subsequent years.

4. During the years 1997, 1998, and 1999, the ANS received funding from DIAND under previous, similar, policies for the purpose of researching and preparing Comprehensive claims on behalf of the Wolf Lake and Timiskaming First Nations. During the years 2000, 2001, 2003 and 2004 the ANS received funding from DIAND under the above policies for the purpose of researching and preparing Specific and Comprehensive claims on behalf of the Wolf Lake, Barriere Lake, and Timiskaming First Nations.
5. I make this Affidavit in support of an application for review pursuant to paragraph 42(1)(a) of the *Access to Information Act* and for no improper purpose.

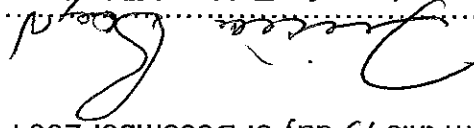
Sworn before me
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at the City of Ottawa,
in the Province of Ontario
on this 15 day of December 2004.

Patricia Boyd
Commissioner for taking oaths
PATRICIA BOYD

Peter Di Gangi
Peter Di Gangi

PATRICK BOYD

A Commissioner for Taking Affidavits, etc



This is EXHIBIT "1" to the
Affidavit of Peter Di Gangi
sworn this 15 day of December 2004

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

NATIVE CLAIMS CONTRIBUTIONS

FUNDING GUIDELINES

Objectives

To enable Indian associations:

1. to research and develop Specific and Comprehensive claims in accordance with the federal government's native claims policies on behalf of their member bands and to present all documents collected on a claim submission to the bands concerned;

2. to assist their member bands in presenting fully documented claims to the federal government;

3. to assist member bands in providing further clarification up to the point of validation after each claim has been submitted to the federal government; and

4. to research and consult in relation to treaty adhesion.

II.

Funding Guidelines

1. Subject to funds being appropriated by Parliament, contributions shall be provided according to Terms and Conditions approved by Treasury Board.

2. For purposes of cost effectiveness, to avoid duplication of research, and to foster the establishment of professional research capability, contributions will be made wherever possible to provincial/territorial or regional Indian associations having a mandate to research and develop claims on behalf of their member bands. Funding will be provided to individual bands only in exceptional cases.

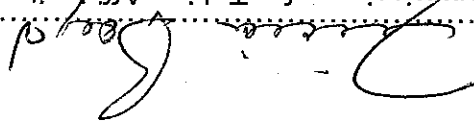
Read from RST
June 2000

II. Funding Guidelines

3. To be eligible for funding consideration during any ensuing fiscal year, Indian associations must submit a claims research and development proposal to the Director, Research and Assessment Directorate, Claims and Indian Government, by January 15th of each year. Funding proposals received after that date will be considered only if funds remain available.
4. Funding proposals from Indian associations must include a description of the claims to be researched, an acceptable workplan, and an itemized budget.
5. The responsibility for determining recipient funding levels, administering funds, and monitoring contribution agreements under this funding program rests with the Assistant Deputy Minister, Claims and Indian Government, or designate.
6. Each funding proposal shall be assessed on the basis of the workplan and budget presented.
7. Each contribution shall be subject to a signed agreement between the Indian association and the Minister.
8. Funding recipients' activities shall be monitored through the review of progress reports and financial statements submitted by Indian associations under the terms of contribution agreements and through consultation meetings.
9. All progress reports and financial statements provided by Indian associations under the terms of contribution agreements shall be filed according to governmental guidelines. For purposes of confidentiality, progress reports will be assigned a protected-access classification. Except where limited by statute, access to claims funding files shall be restricted to: the Research Funding Division; the Director, Research and Assessment; the Assistant Deputy Minister of Claims and Indian Government; the Deputy Minister; and the Minister.

PATRICIA BOYD

A Commissioner for Taking Affidavits, etc



This is EXHIBIT "2" to the
Affidavit of Peter Di Gangi
sworn this 15 day of December 2004

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

NATIVE CLAIMS CONTRIBUTIONS

TERMS AND CONDITIONS

Definitions

I.

1. Comprehensive land claims relate to the traditional use and occupancy of lands and to the special relationship that native people have had with the land since time immemorial. (cf. "Comprehensive Land Claims Policy", 1986)

2. Specific claims refer to those claims which relate to the administration of land and other Indian assets and to the fulfilment of treaties. (cf. "Outstanding Business", 1982)

3. Treaty adhesions relate to Indian bands which become signatories to an existing treaty, thereby accepting all rights, privileges, and responsibilities conferred by that treaty.

Objectives

II.

To provide direction for the granting and subsequent administration of contributions enabling Indian associations to:

1. research and develop Specific or Comprehensive claims, in accordance with the federal government's claims policies, on behalf of their member bands and to present all documents collected on a claim submission to the bands concerned;

2. assist their member bands in presenting fully documented claims to the federal government;

3. assist member bands in providing further clarification up to the point of validation after claims are submitted to the federal government; and

4. research and consult in relation to treaty adhesion.

PC 17 from RFD
MAE 2007

III. Terms and Conditions

1. Contributions shall be made to Indian associations which have a mandate to conduct claims research on behalf of their member bands. Claims research and development may be carried out by Indian associations under the authority of individual band council resolutions, resolutions passed by bands at the associations' annual meetings, or by means of a general mandate given to the associations by member bands in the constitution of the Indian association itself. Funding will be provided to individual Indian bands only in exceptional cases.
2. To be eligible for funding consideration during the ensuing fiscal year, Indian associations must submit a claims research and development proposal to the Director, Research and Assessment Directorate, Claims and Indian Government, Department of Indian and Northern Affairs Canada, Ottawa, Ontario, K1A 0H4, by January 15th of each year. Funding proposals received after that date will be considered only if funds remain available.
3. Specific claims research proposals will be accepted for funding consideration provided that the research relates to the following:
 - (a) the non-fulfillment of a treaty or agreement between Indians and the Crown;
 - (b) a breach of an obligation arising out of the Indian Act or other statutes pertaining to Indians and the regulations thereunder;
 - (c) a breach of an obligation arising out of government administration of Indian funds or other assets;
 - (d) an illegal disposition of Indian land;
 - (e) failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority; and
 - (f) fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government.

III. Terms and Conditions

4 Comprehensive claims research proposals will be accepted for funding consideration provided that the research is limited to the preparation of a statement of claim and appropriate supporting materials by the claimant group containing the following elements:

- (a) a statement that the claimant group has not previously adhered to treaty;
- (b) a documented statement from the claimant group that it has traditionally used and occupied the territory in question and that this use and occupation continues;
- (c) a description of the extent and location of such land use and occupancy, together with a map outlining the approximate boundaries; and
- (d) the identification of the claimant group including the names of the bands, tribes or communities on whose behalf the claim is being made, the claimant's linguistic and cultural affiliation, and approximate population figures for the claimant group.

5. The Indian association must include in its proposal:

- (a) the identification of the Specific or Comprehensive claims to be researched;
- (b) a workplan by which the Indian association plans to research, develop, and assist in submitting potential claims to the bands concerned, and
- (c) an itemized budget listing salaries, travel, consultation, administration, legal and professional services, and other related costs.

6. Contribution proposals shall be assessed by the Assistant Deputy Minister, Claims and Indian Government or designate. Funding administrators shall review the contribution program during the year and should available funds remain, additional funding support may be provided to Indian associations on the basis of supplemental funding requests or, to meet the needs of an accelerated claims research schedule.

III. Terms and Conditions

7. Funding administrators will review the funding proposals as to their relevance to the federal government's native claims policies. The level of contribution will be determined after consideration of the following:

- (a) the Indian association's claims research proposal and workplan;
- (b) the Indian association's research capability and record of achievement in previously funded research endeavours;
- (c) the application of sound financial management practices as demonstrated by the association's audited financial statements;
- (d) the number of member bands served;
- (e) the population served;
- (f) the geographic area served;
- (g) comparative costs including travel, interpretation, consultation, translation, professional fees, administration, staff, and support;
- (h) the complexity of the proposed research project; and
- (i) competing requests on the departmental program budget for funding support.

8. Contributions shall be applied only to claims research, development, presentation and ancillary costs incurred in administering and co-ordinating such activities. Contributions shall not be used to meet the costs of litigation without the prior written approval of the Minister.

9. Under the requirements of the contribution agreement, the Indian association must submit progress reports and financial statements pertaining to the authorized research and development activities being funded. Funding administrators will monitor the Indian association's progress by reviewing the reports and through consultation meetings:

III. Terms and Conditions

10. Subject to funds being appropriated by Parliament, contribution agreements may be entered into for periods of up to one year. Advance payments will be made every three months, or more frequently if it is deemed advisable to do so, on receipt of acceptable progress reports, financial statements, and cash flow projections for the ensuing period. All advances will be based upon acceptable cash flow requirements and will take into consideration cash surpluses from the preceding period.

11. Associations shall be funded to the full extent of the contribution agreement provided the terms and conditions of the agreement are adhered to and the Minister is satisfied that the research demonstrates reasonable progress toward the completion and presentation to member bands of fully documented claims.

12. All or a portion of the final advance payment in the contribution agreement may be withheld should the Indian association's final quarter cash flow projection not be consistent with previous spending patterns as indicated in its financial statements.

13. The Indian association is required to submit a consolidated audited financial report to the Assistant Deputy Minister, Claims and Indian Government or designate within 90 days of the close of its fiscal year showing total revenue and expenditures for all programs and activities including native claims research and development.

14. The consolidated audited financial statements shall be prepared in accordance with generally accepted accounting principles and practices and shall be certified by a firm of public accountants authorized under the laws of the province or territory in which the Indian association is normally located.

15. If upon receipt of the consolidated audited financial statement, the Minister has reason to believe that the contribution has not been disbursed in accordance with the contribution agreement, the Minister may at public expense appoint an independent auditor to verify expenditures. A copy of the independent auditor's report will be made available to all parties.

III. Terms and Conditions

- 16. In the event that advance payments are made in full prior to the receipt of an annual consolidated audited financial report, indicating that an unallowable expenditure has been made during that period, the unallowable expenditure will be considered a debt due and payable to the Crown. The funding administrators will recover that amount from future advance payments or contribution agreements with that Indian association.
- 17. Authority to sign contribution agreements on behalf of the Minister may be delegated to a position level no lower than the Director, Research and Assessment Directorate, Claims and Indian Government and shall be detailed in the financial signing authorities, Ministerial delegation document.
- 18. The maximum annual contribution for any Indian association will be \$600,000. Individual contributions exceeding this amount will be subject to Treasury Board approval.
- 19. Authority to make payments in accordance with contribution agreements may be delegated to a position level no lower than the Chief, Research Funding Division, Research and Assessment Directorate, to the maximum dollar value of the contribution agreement and such delegation shall be detailed in the financial signing authorities, Ministerial delegation document.
- 20. All of the association's research findings pertaining to a claim will be provided to the Minister, along with an analysis of the claim, at the time of submission.
- 21. Periodic evaluation of the native claims research and development contribution program will be carried out in accordance with departmental evaluation policy.
- 22. These Terms and Conditions will remain in effect until amended or rescinded.