

October 28, 1992

RESEARCH FUNDING FOR SPECIFIC CLAIMS DISCUSSION PAPER FOR THE JOINT WORKING GROUP ON SPECIFIC CLAIMS

PURPOSE

The purpose of this paper is to: a) describe the current activity of the Department of Indian Affairs and Northern Development (DIAND) in funding research by First Nations into Specific Claims; b) outline some problems with this activity; c) suggest some possible objectives for First Nations and DIAND for research funding; and d) propose some options for this funding which appear to meet most of these objectives

BACKGROUND

In 1973, a program to provide bands with funding to research and prepare Specific Claims requests was implemented. This funding was approved because DIAND recognized the need to provide bands with additional resources to allow them to complete the preparatory work required to submit a Specific Claims request. The original intent of this program was to provide resources directly to the bands in need of research services. However, since the bands usually did not have the expertise required to research claims, DIAND began funding Aboriginal organizations (TARRs) that provided this expertise.

DIAND established a Research Funding division separate from the organizational unit responsible for negotiating the claims to ensure an appropriate separation of duties within the Department so as to minimize any potential conflict of interest or perception thereof. This division developed criteria to distribute Specific Claims research resources including the client First Nation's research needs, status of the claim settlements, the number of First Nations the organization represents, and the amount of funding received the previous year.

A 1990 evaluation of the research funding found that, while the research funding program was well run by DIAND, it

"...had not been meeting the objectives of most native organizations which received funding for claims research mainly because of the level of funding and restrictions on the types of activities allowed and subjects eligible for research." The evaluation also found the program "...does not have effective incentives for good performance or disincentives for poor productivity"

As a result of the Native Agenda, announced in September 1990, the government substantially increased the funds available for research funding. In 1991-92, the Research Funding division distributed \$6.3 million to approximately 18 organizations, much of which service more than one First Nation. These organizations represent the majority of the First Nations in Canada. (See Annex A for a list of these organizations and the funding amounts they received.) The Division also distributed approximately \$.4 million directly to First Nations for a variety of reasons; i.e. there is no TARR in Quebec, some of the research submitted by claimants requires further clarification, etc.

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In 1991 the Auditor General observed that accountability provisions in the existing program did not enable DIAND to

"...know to what extent \$50 million in research funds have been used for the intended purpose."

CURRENT SITUATION

More than 75 per cent of all First Nations are now engaged in pursuing specific claims against the Crown.

A number of concerns have been expressed by First Nations, DIAND officials, the Auditor General and a program evaluation over how research funding is currently allocated. Some of these concerns include:

- the need to remove DIAND from exercising judgment on the allocation of research funding;
- the lack of clear accountability of organizations now funded. TARR groups are now accountable to both their clients and DIAND;
- complaints from First Nations that they are not getting adequate service as noted in the evaluation;
- there is no mechanism for establishing funding priorities;
- there is a lack of clarity about the nature of research required to validate a claim.

OBJECTIVES

The following are suggested objectives against which alternative methods of research funding could be evaluated:

1. DIAND should not play a 'judgemental' role in the distribution of research funds;
2. Any new distributive approach should be administratively simple, efficient and fair;
3. The client of the research - the First Nations - should have sufficient clout to hold researchers accountable;
4. There should be incentives for research organizations to perform well;

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5. Any new research system should not assign conflicting roles to the Specific Claims Commission;
6. Any new system should be 'in tune' with a emerging government-to-government-type relationship between First Nations and the Government of Canada.

OPTIONS

With the above objectives in mind, the Federal Government negotiating team proposes three options for consideration of the Joint Working Group.

OPTION I: *Distribute the Claims Research Funding to Each First Nation by way of a Grant.*

This option would have three parts:

- I) Current research funding being distributed directly to First Nations as a grant according to an agreed on formula;
- II) The operation of TARRs on a fee for service basis; and
- III) An independent third party (likely the Specific Claims Commission) providing research advice to First Nations (i.e. what constitutes a well researched claim, what to look for in a good researcher, etc.)

Advantages to this option include the following:

- administration would be simpler and less costly than now (indeed the budget for the 1 1/2 PYs in DIAND now assigned to administer research funding could be reassigned to fund the 3rd element in this option - a third party providing research advice to First Nations.);
- First Nations would have maximum flexibility; funds would not have to be spent in any one year (the average First Nation, over an 8 year period, would receive close to \$100,000.);
- TARRs would have a significant incentive for good performance;
- this arrangement would be in keeping with an emerging government-to-government relationship;
- bands could use funds on other claims-related activities; e.g. to support litigation if negotiations fail.

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Disadvantages to this option include the following:

- research funding on an annual basis would be spread more thinly than is now the case;
- some of the funds might not be used for claims research purposes;
- some TARRs would "go out of business";
- small bands or bands with many claims might not receive sufficient funds, even over several years, to research adequately complicated claims.

OPTION 2: *Introduce a Voucher System which retains the TARR system but enhances clout of First Nations.*

There are a variety of ways of designing a voucher system. One possibility is the following:

- Each First Nation receives voucher points based on an agreed on formula (c.g. one voucher point per member); these voucher points could be distributed annually or less frequently (c.g. every three years.);
- Each First Nation would then assign its voucher points to a particular TARR (a TARR would require a certain minimum number of points before it could be eligible to receive funding.);
- The amount of funds distributed to each TARR would be a function of the number of voucher points assigned to it;
- Either DIAND or an independent third party (possibly the Specific Claims Commission) could administer the voucher system;
- TARRs would then provide service to the First Nations which have assigned points to them;
- A first Nation could "withdraw" its voucher points from a TARR and assign them elsewhere, given a specified period of notice.

Advantages to this voucher system include the following:

- DIAND would no longer play a judgmental role on the distribution of research funding;

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- First Nations would have the means to hold TARRs accountable for high quality service;
- there would be real incentives for TARRs to perform well;
- small bands could be provided intensive research assistance for complicated claims;
- research effort could be more concentrated than in option one;
- all available funds would be spent on research.

Disadvantages include the following:

- some TARRs would disappear;
- TARRs might be forced to spread their efforts too thinly in order to retain member support;
- the voucher system is more complicated to administer than the more straight forward grant system outlined in option one;
- First Nations would have less flexibility than in option one.

OPTION 3: *Claims Funding distributed by an independent third party according to criteria laid out in the new policy.*

The key element of this option is choosing an appropriate 3rd party to distribute the research funding. Possible third parties include:

1. The Indian Specific Claims Commission (possibly using an "arms length" funding mechanism, much like the way in which the Royal Commission on Aboriginal Peoples has employed David Crombie to distribute intervenor funding on behalf of the Commission);
2. A university;
3. An organization like the Canadian Bar Association; or
4. A network of regionally based 3rd parties.

Even if the Indian Specific Claims Commission were to establish an arms length funding mechanism, there might be a perceived conflict of interest on the part of some First Nations who might complain that an adverse recommendation on the validity of their claim was caused by insufficient funds for research.