
Financial Services Approved University Policy

Employee or Independent Contractor Policy

Table of Contents

1.0	Purpose	2
2.0	Definition.....	2
3.0	Introduction.....	2
4.0	Payments to individuals	2
5.0	Payments to Independent Contractors or Principle Investigators	3
6.0	Summary Chart	3
7.0	Interpretation	3
APPENDIX 1		4
DETERMINATION OF EMPLOYMENT RELATIONSHIP		4
APPENDIX 2		6
SUMMARY CHART FOR TREATMENT OF PAYMENTS.....		6
A. Full-time Academic Appointments		6
B. Part-time Instructors for Credit Courses		6
C. Non-credit Short Courses and Special Seminars or Workshops not related to the day-to-day academic programs of the university		7
D. Guest Lecturers/Speakers		7
E. Consulting.....		8
F. Artistic Performances		9
G. Non-instructional Services		9
H. Research		10
J. Forgivable Loans		11
K. Other Taxable Benefits		12
APPENDIX 3		13
PROCEDURE FOR PAYMENTS TO INDEPENDENT CONTRACTORS		13
APPENDIX 4		15
SAMPLE INDEPENDENT CONTRACTOR AGREEMENT		15

Financial Services**Approved University Policy**

Employee or Independent Contractor Policy

1.0 Purpose

This policy provides guidance on the appropriate methods of payment for services provided to the University of New Brunswick and whether or not an employer/employee relationship exists in connection with the provision of those services.

2.0 Definition

An employer/employee relationship exists where a person providing a service is deemed, for Canada Revenue Agency (CRA) purposes, to be an employee of the University and the University is required by law to provide statutory benefits and make specific source deductions from payments. Please refer to Appendix 1 for more details.

3.0 Introduction

- 3.1 At times, services are provided to the University under arrangements other than regular employee appointments. Unless the provision of such services is restricted by the University's collective bargaining agreements, the University may contract for these services with an independent contractor carrying on business as an individual or as a company. In this regard, the University endeavours to provide the greatest flexibility regarding tax treatment while at the same time honour its statutory obligations.
- 3.2 Where an employer/employee relationship exists in respect of the performance of services, the University is required by law to provide statutory benefits (CPP, EI, and WCB) and to follow specific source deduction and reporting procedures. It is therefore important that those who negotiate contracts for services be aware of and follow the guidelines set out in this policy.
- 3.3 The specific criteria or tests used to determine the existence of an employer/employee relationship are briefly explained in Appendix 1. When there is uncertainty or a difference of opinion about whether an employer/employee relationship exists, Financial Services should be consulted prior to arrangements being concluded.

4.0 Payments to individuals

- 4.1 An employer/employee relationship exists if the individual performing the services is subject to the University's control regarding what shall be done and how it shall be done. If the extent of the University's control is unclear, other tests may be applied (see Appendix 1).
- 4.2 When an employer/employee relationship exists, standard University appointment procedures must be followed. The individual will be paid through the payroll system, the payments will be subject to source deductions for income tax, CPP and EI, and will be reported on a T4 slip.

Financial Services**Approved University Policy**

Employee or Independent Contractor Policy

- 4.3 An employer/employee relationship may not exist if the University clearly does not directly control the individual performing the services and other tests indicate a non-employee status. Examples are guest speakers and visiting concert artists. In such cases the individual will be paid through the accounts payable system as an independent contractor. If the individual is a resident of Canada, a T4A will be issued according to CRA regulations. If the individual is not a resident of Canada a T4ANR will be issued and non-residents tax will be withheld unless a waiver is obtained. Non Residents of Canada should be directed to the Regulation 105 section of the Canada Revenue Agency web site before agreements are in place to make any payments to these individuals.

5.0 Payments to Independent Contractors or Principle Investigators

- 5.1 The University may engage an independent contractor to provide needed services. An independent contractor may take the form of a sole proprietorship, a partnership, or a limited company, and will have established a name that it uses to carry on business.
- 5.2 The University may also engage Principle Investigators for Research related activities. The Principle Investigator is normally a current employee of the University.
- 5.3 If the contract for services is with an independent contractor, an Independent Contractor Agreement (see Appendix 4 for a sample) is required. Payment to the contractor will normally be made following approval of invoices submitted under the terms of the Independent Contractor Agreement (ICA). See Appendix 3 for additional details.

6.0 Summary Chart

The Summary Chart, attached in Appendix 2, outlines the different types of arrangement and the manner in which the payments will be made. If the summary chart does not make reference to a specific situation, or for payments for services listed in Appendix 2 but which are to non-resident individuals or non-resident incorporated entities, the department concerned shall consult with the Director of Financial Services & Assistant Comptroller who shall make the decision on the method of payment.

7.0 Interpretation

Questions of interpretation or application of this policy or its procedures shall be referred to the Director of Financial Services & Assistant Comptroller, whose decision shall be based on the best interests of the University in meeting the CRA taxation rules.

**Financial Services
Employee or Independent Contractor Policy**

Approved University Policy**APPENDIX 1****DETERMINATION OF EMPLOYMENT RELATIONSHIP**

Various indices have evolved from court cases over the years as to whether an individual is an employee or self-employed. These indices are often grouped into "tests". For example, one general test is the control test. Others may be described as the integration test, the economic reality test, and the specified result test. For further information, please refer to the Canada Revenue Agency web site publication RC4110 Employee or Self-employed?

1. CONTROL

In an employer/employee relationship, the employer has the right to control the employee's method of doing the work. This might be compared to the situation (i.e. self-employment) in which the work to be done is controlled but not the manner of doing it. In the former, the employer determines what is to be done and how it is to be done; in the latter, the employer determines what is to be done but not how it is to be done. The degree of control exerted (frequently referred to as the "control test") may be examined in light of the following:

- The employer's power to select the employee,
- The extent to which the employee is subject to the supervision of his/her employer,
- The method and nature of compensation,
- The employer's right to determine the hours of work,
- The power to delegate, and
- The employer's right to dismiss or suspend the employee.

While the control test is still applicable, the courts have found it difficult to rely on this aspect alone. The control test by itself is often found to be too inflexible. Other criteria used include the ownership of facilities and tools (for example, does the worker supply his/her own facilities and tools?), and the chance of profit and risk of loss (for example, does the worker earn a fixed amount and incur few costs or does the worker incur various costs without certain knowledge of recovery and profit?).

2. INTEGRATION

The integration test examines the role of the individual in the university and if the work done is an integral part of the university's business, the individual is an employee. If the work done can be severed from the university, that may be an indication that the individual is self-employed.

3. ECONOMIC REALITY

The economic reality test examines the opportunity for profit (or loss) and investment in facilities. The absence of chance of profit and risk of loss may indicate an employee relationship (for example, where a fixed salary is paid and there are few expenses not reimbursed by the employer).

4. SPECIFIED RESULT

The specified result test examines the nature of the control. Is the individual paid to perform a specific task or to obtain a specific result or paid to put his/her personal service at the disposal of his/her employer for a period of time?

If the contract provides for a specific result to occur but does not contemplate the services of any particular individual to accomplish that result, then the relationship may be one of self-employment. If, on the other hand, the contract requires the services of one person to be put at the disposal of another for a fixed or indeterminate time, the relationship may be that of an employee.

The above tests have only been briefly discussed because such factors are illustrative rather than definitive. The significant point is that, while a number of tests have been used by the courts in determining whether or not an individual is an employee, no one test is conclusive. The question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.

Financial Services

Approved University Policy

Employee or Independent Contractor Policy

APPENDIX 2

SUMMARY CHART FOR TREATMENT OF PAYMENTS

Information below in the Type of Payment column refers to payments made to Canadian employees or Independent Contractors through either the payroll process or the accounts payable process. Employees are paid through payroll pursuant to the submission of appointment letters. Vendors, including independent contractors, are paid through Accounts Payable pursuant to the submission of invoices or cheque requisitions, supported by Independent Contractor Agreements where required (see Appendix 3).

	Type of Payment	CRA References
A. Full-time Academic Appointments		
1. All individuals appointed under Full-time Academic Appointments are considered employees of the University of New Brunswick.	Payroll, (T4)	T4001
2. In the case where an individual is seconded from another educational institution or government entity and where the contract is with the other institution.	Accounts Payable	
B. Part-time Instructors for Credit Courses		
1. <u>University of New Brunswick Employees:</u> Where an employee relationship already exists and the employee is engaged in supplementary lecturing. Under all circumstances the employee will be paid through payroll.	Payroll, (T4)	T4001
2. <u>Individuals:</u> All individuals appointed as part-time instructors are considered employees of the University.	Payroll, (T4)	T4001
3. <u>Proprietors:</u> A proprietorship is an unincorporated business owned by one person, the proprietor. Where the part-time instructor is the proprietor, and		
a) the subject of the course is not directly related to the business of the proprietorship	Payroll, (T4)	T4002 RC4110
b) the subject of the course is directly related to the business of the proprietorship, but the proprietor is the only individual involved in the business	Payroll, (T4)	T4002 RC4110
c) the subject of the course is directly related to the business of the proprietorship and the proprietorship has two or more highly trained employees	Accounts Payable	T4002 RC4110
4. <u>Partners:</u> A partnership is an unincorporated business by two or more persons, the partners. Where the part-time instructor is a partner, and		
a) the subject of the course is not directly related to the business of the partnership	Payroll, (T4)	T4001 RC4110
b) the subject of the course is directly related to the business of the partnership	Accounts Payable	T4002 RC4110

Financial Services Approved University Policy

Employee or Independent Contractor Policy

	Type of Payment	CRA References
B. Part-time Instructors for Credit Courses (continued)		
5. <u>Employees of an Enterprise:</u> Where a part-time instructor is an employee of a • a proprietorship, or • a partnership, or • a corporation, where the part-time instructor - is not a controlling shareholder, or a member of a related group that controls the enterprise - is a controlling shareholder, or a member of a related group that controls the enterprise, and the subject of the course is directly related to the business of the enterprise, and the enterprise has a number of highly trained employees - is a controlling shareholder, or a member of a related group that controls the enterprise, and the subject of the course is not directly related to the business of the enterprise - is the controlling shareholder and is the only trained employee		
a)	Accounts Payable	T4002 RC4110
b)	Accounts Payable	T4002 RC4110
c)	Payroll, (T4)	T4001
d)	Payroll, (T4)	T4001
C. Non-credit Short Courses and Special Seminars or Workshops not related to the day-to-day academic programs of the university		
1. When the course is recurring or intended to be recurring and the individual teaches more than 25 hours, an employment relationship will normally exist.	Payroll, (T4)	T4001
2. If a course is not recurring (i.e. not more than once a year) or if the course is recurring or intended to be recurring but the individual teaches 25 hours or less, an employment relationship will normally not exist.		
a) University of New Brunswick employees and others engaged as independent contractors	Accounts Payable(T4A)	RC4157
b) when individuals are seconded from another educational institution or government entity	Accounts Payable	
D. Guest Lecturers/Speakers		
A guest lecturer/speaker is an individual brought in from outside the university to lecture on a specific topic within a course. This person would not deliver more than approximately five lectures. The guest lecturer must be engaged specifically for that person's expertise on a particular topic rather than as a substitute for a regular instructor. They normally have no marking or grading responsibility, no office facilities, or support staff provided and no ongoing responsibility to the participants attending.	Accounts Payable (T4A)	RC4157

Financial Services Approved University Policy

Employee or Independent Contractor Policy

	Type of Payment	CRA References
E. Consulting		
Consulting is the provision of professional or expert advice. It does not include teaching.		
1. <u>University of New Brunswick</u> employee hired as consultant:		
a) for additional services which are of the type of service provided in the normal course of duties under existing employment contract;	Payroll, (T4)	T4001
b) where type of service is clearly beyond terms of existing employment contract, but where the four tests are not met (see Appendix 1)	Payroll, (T4)	T4001
c) where type of service is clearly beyond terms of existing employment contract, and where the four tests are met (see Appendix 1);	Accounts Payable (T4A)	
2. <u>Individuals</u> If the individual meets the definition of control, meeting 4 test requirements and earns less than \$30,000 in revenue for HST registrant purposes.	Accounts Payable (T4A)	
3. <u>Proprietors:</u> A proprietorship is an unincorporated business owned by one person.		
a) where the proprietorship has a number of highly trained employees and the contract can reasonably be regarded as one between the proprietorship as a firm (earnings over the HST threshold of \$30,000)	Accounts Payable	T4002 RC4110
b) where there is only one individual involved in the business, but the four tests are met (see Appendix 1)	Accounts Payable	T4002 RC4110
4. <u>Partners of Firms:</u> Where a contract is between the University and a partnership and the subject of the course is directly related to the business of the partnership.		
a) and no particular individual is specified	Accounts Payable	T4002 RC4110
b) and a particular individual is specified	Accounts Payable	T4002 RC4110

Financial Services Approved University Policy

Employee or Independent Contractor Policy

F. Artistic Performances		
1. Individual performers where the University determines the nature of the performance	Payroll (T4)	T4001
2. Individual Performers where the University does not determine the nature of the performance	Accounts Payable (T4A)	T4002 RC4110
3. Groups where the individuals are part of an arm's length performing group, and payment is made to that group rather than to the individuals	Accounts Payable	T4002 RC4110

G. Non-instructional Services		
Non-instructional services would include, but is not limited to: marking exams and papers, grading correspondence courses, preparing exams, preparing course outlines, preparing textbooks, invigilating, typing, writing a computer program, preparing stage props for a play, translation services, sports camp coaches, etc.		
1. <u>University of New Brunswick</u> employees where service is of the type of service provided in the normal course of duties under existing employment contract	Payroll (T4)	T4001
2. <u>All other individuals</u>		
a) where only individual's time is purchased and specific tasks are assigned	Payroll (T4)	T4001 RC4110
b) where fee is predicated upon quantity e.g. number of interviews completed, pages prepared, papers marked, etc.;	Accounts Payable (T4A)	RC4110 RC4157
c) if the work is done away from the university, the person is expected to pay own expenses, was free to use the services of others and was simply required to produce a completed product;	Accounts Payable (T4A)	T4002 RC4110
d) Individuals operating as professional businesses (whom meet the four control criteria), such as health care, web designers, accounting or legal professionals, who invoice the University under a business name.	Accounts Payable	T4002 RC4110

Financial Services

Approved University Policy

Employee or Independent Contractor Policy

	Type of Payment	CRA References
H. Research		
1. <u>Principle Investigator</u>		
a) Research forming part of the individual's regular academic appointment with the University of New Brunswick	Payroll (T4)	T4001
b) Payments for research from sponsored research contracts, administered by the University which are considered outside the individual's regular academic appointment. The research is being carried out at the discretion of the individual, Principle Investigator fees are provided by the sponsor who is independent of the University, and the ultimate responsibility for the research rests with the Principle Investigator. A separate agreement must be entered into between the individual and the University, signed by the Sponsor and the Principle Investigator, the Dean/Director and the Vice-President Research, or designate, where it is certified that all of the following apply: i) the income does not support the person's academic appointment; ii) responsibilities under the Prime Research Contract from which the payments are derived are not part of the Principle Investigator's usual employment responsibilities; iii) the Principle Investigator has agreed to undertake the work under the Prime Research Contract as a matter of personal choice and the research is not being carried out in the course of the Principle Investigator's employment; iv) the Sponsor of the Prime Research Contract is an entity external to the University and shall pay the costs of research; v) the Prime Research Contract outlines a defined task to be carried out; vi) even though the task is to be carried out within a specified time limit, the Principle Investigator has not been hired full-time by the Sponsor for a specific period of time; vii) The control over or direction of the research rests with the Principle Investigator.	Accounts Payable (T4A)	T4002 IT-75R4 RC4157 IT56(1)0*
2. <u>Non Academic University of New Brunswick Employees</u> : where service is of the type of service provided in the normal course of duties under existing employment contract	Payroll (T4)	T4001 IT-75R4
3. <u>UNB employees and non employees who deal at arm's length with the University</u> :		
i) where only the individual's time is purchased and specific tasks are assigned;	Payroll (T4)	T4001
ii) where the fee is predicated upon quantity produced, e.g., number of interviews completed, pages typed, etc.;	Accounts Payable	T4002 RC4110
iii) where the work is done away from the university, the person is expected to pay own expenses, was free to use the services of others, and was simply required to produce a completed product.	Accounts Payable	T4002 RC4110

Financial Services Approved University Policy

Employee or Independent Contractor Policy

	Type of Payment	CRA References
I. Scholarships/Fellowships/Bursaries		
1. Visiting Scholars, Researchers, Scientists		ITA-115(2)e(iii)
a) Non-resident scholarship/fellowship/bursary	T4A (HR)	56(1)n*
2. Doctorate, Post-Doctorate Fellowships		
Depends on Primary Purpose of the Award		
a) if purposely for research	T4A (HR)	ITA 56(1)o*
b) if purposely for study	T4A (HR)	ITA 56(1)n(i)*
3. Research Assistantships		
a) Graduate Research Assistants	T4A (HR)	ITA 5(1) and 56(1)o*
b) Graduate Teaching Assistants	T4	ITA 5(1) IT-75R4 IT56(1)r*
c) Research Assistants	T4A (HR)	ITA 5(1) and 56(1)o*
d) Research Assistants (Non-thesis)	T4	ITA 5(1) and 56(1)r*
4. Scholarships Net amount less exemption per ITA- 56(3)	Accounts Payable (T4A)	IT-75R4 and 56(1)n(i)*
5. Undergraduate Resident Assistants, Proctorships		
a) Credit toward residence fees in lieu of services rendered	Accounts Payable (T4A)	IT-75R4 and 56(1)n(i)*
b) Honorarium for Payment of Services above	Accounts Payable (T4A)	IT-75R4 and 56(1)n(i)*
J. Forgivable Loans		
Where an employee is paid or given funding for continuing education with agreement to return upon completion		
1. Interest on Balance Outstanding until Repayment	T4A	IT-421R2S12
2. Becomes Income in Year of Forgiveness	T4	ITA 80.4 and IT-421R2S11 ITA 5(1)

Financial Services Employee or Independent Contractor Policy	Approved University Policy
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	Type of Payment	CRA References
K. Other Taxable Benefits		
Other employer benefits granted to employees		
1. Tuition Benefit for Employees	T4	ITA- 6(1)a
2. Housing Benefit		ITA
a) Dons/Asst. Dons	T4A (HR)	
b) Visiting Scholars (Living Allowances)	Accounts Payable (T4A)	
3. Life Insurance Premiums- Employer paid	T4	ITA
4. Bonuses, Honorariums to Employees	T4	ITA 5(1) and 6(1)a

It should be emphasized that the method of reporting the payment by the university does not restrict the individual's right to file his or her personal income tax return on the basis of self-employment nor do they preclude subsequent discussions with the tax authorities or appeal to the courts.

*NOTE: Withholding Tax is only required at source if the income meets ITA 56(1) r. It is not required to be deducted at source if the source of income meets ITA 56(1) n or 56(1) o. The employee is at liberty to elect to have tax deducted at source through submission of a TD1 to Payroll Services.

APPENDIX 3**PROCEDURE FOR PAYMENTS TO INDEPENDENT CONTRACTORS****A. Use of an INDEPENDENT CONTRACTOR AGREEMENT**

1. This policy provides for certain situations where services are provided by individual(s) who are not held to be employees of the University. In such situations, it is important to document this understanding for the benefit of both the University and the individual before any work is performed by the individual. An Independent Contractor Agreement (ICA) is used for this purpose. This form clarifies a number of important points regarding the specified services including:
 - The individual and the University's Financial Services Department agree that an employment relationship does not exist,
 - The individual is (or is not) exempt from charging HST for services rendered,
 - The individual is not covered by statutory employment programs such as CPP, EI, and WCB, and is not entitled to any other benefits that flow from an appointment as an employee, and
 - The individual has the appropriate liability insurance in place at the time of signing the contract, if liability insurance is deemed to be required under the terms of the [Requirements for Liability Insurance Policy](#).
2. Payment for services provided by individuals who are not otherwise employees of the University.
 - a) An ICA is not required for a payment totalling \$500 or less provided that no liability insurance is required. A cheque requisition or an invoice must be submitted for payment.
 - b) Payments to guest lecturers/speakers for services of a short duration (no longer than one week) can be made by cheque requisition or invoice without an ICA.
 - c) For a payment in excess of \$500, attach an ICA as per below to the supplier's invoice, along with a copy of the independent contractor's liability insurance and forward to Financial Services for payment.
- i) Multi Payments: When the contractor is not otherwise an employee of the university by virtue of an existing payroll appointment, and is clearly carrying on a consulting or other such business with numerous clients outside the university, the contractor may submit invoices for payment like any other vendor, provided that an ICA has been completed, approved and attached to each submitted invoice for all types of work except for stipend teaching. Such contractors will have established a public profile by having a listing in the yellow pages, for example, and usually will have a HST registration number. It is the policy of the University to pay out term stipend payments in the middle of the month of the last month of the stipend.
- ii) Single Payment: If the ICA covers a situation where there is only one payment to be made to the contractor upon the completion of the services, no invoice or cheque requisition is required. The ICA itself can be submitted for payment if the University signing authority indicates on the agreement that the services have been completed and payment is authorized, however, contractors may still wish to provide an invoice for services.

Financial Services**Approved University Policy**

Employee or Independent Contractor Policy

3. When payment for extra services provided by current payroll appointments is necessary, an ICA is required for all such payments equal to or greater than \$100. Minor payments of less than \$100, when it is clear that an employment relationship does not exist, do not require an ICA and can be paid with a cheque requisition or invoice to be submitted for payment.
4. A copy of the ICA should be retained in the department for record.

B. Procedure for Principal Investigators (Research)

Principal investigators (PIs) may be compensated for the performance of services in connection with a research contract only after the University has received payment from the client. In such cases, the P.I. Fee rate will normally be based on his/her University salary, which is calculated as follows:

Annual Salary/225 days = \$ per day; or
Annual Salary/225 days/7.25 hours per day = \$ per hour

PIs wishing to use other fee scales are advised to consult the Office of Research Services (ORS) beforehand.

In order to claim PI Fees, please complete the ["Cheque Requisition for Principal Investigator Fees"](#) form and send to ORS.

PI Fees must have an associated overhead charge expensed to the account. Please refer to the [UNB Overhead Policy](#) on the ORS web site.

Principal Investigators can elect to transfer PI fees to a General Research Trust Account to be used to cover ongoing research expenses, and therefore not have the fee recorded as personal income. Please access the [General Research Trust Account Policy](#) on the ORS website.

C. Other forms of contract documents

In some cases departments may have generated a customized contract document for use in lieu of an ICA. In these situations such customized contracts must at least include the contractor's HST status, and the wording of provisions 3, 6 and 7 found on page 2 of the sample ICA. A copy of the department specific contract must be forwarded to Financial Services in lieu of an ICA.

D. Non-resident withholding taxes

Departments are reminded that non-resident withholding taxes, usually 15%, must be deducted on payments made to vendors (guest speakers, contractors, etc.) who are not residents of Canada, for services provided in Canada unless the vendor obtains a waiver in advance from the Canada Revenue Agency (CRA).

APPENDIX 4

SAMPLE INDEPENDENT CONTRACTOR AGREEMENTS

Please refer to the following links to obtain samples of agreements:

All agreements must contain the Provisions of Agreement