

Employee or Self-Employed?

Presentation to Sea Kayak Guides Alliance of BC

by the Canadian Revenue Agency June 2005

The Courts

Over time, the Courts have established principles on how to determine a worker's employment status. These principles were reconfirmed by the Supreme Court of Canada in the *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* decision.

The Canada Revenue Agency applies these principles when determining a worker's employment status.

The Principles

When determining the employment status of a worker, we apply the factors established by the Courts. The central question we address is as follows: Is the person who is engaged to perform the services performing them as a person in business on his/her own account or as an employee? In making this determination, the following factors are considered:

- The level of control the payer has over the worker's activities.
- Whether the worker provides his/her own equipment.
- Whether the worker could subcontract the work or hire assistants.
- The degree of financial risk taken by the worker.
- The degree of responsibility for investment and management held by the worker.
- The worker's opportunity for profit in the performance of his/her tasks.
- Any other relevant factors (contract, intention of the parties, etc.)

It is the combination of all the relevant factors, considered together and weighted, that enables one to determine the employment status of a worker.

The CRA has no preference as to whether workers are employees or self-employed; the workers/payors can set up their working relationship as they see fit. However, they must ensure that the terms and conditions of their relationship are reflective of the status they have chosen.

The level of control the payor has over the worker's activities

Some points that are considered:

- Who determines what and how work will be performed?
- Is the worker told what equipment, tools and supplies to use?
- Who establishes priorities and deadlines?
- Does the payor give training or instructions to the worker?
- Does the worker need the payor's approval to do things?
- Who has the final say over how things are done?
- Can the payor discipline the worker?
- Who determines the amount of pay?
- Can the worker refuse work?
- Are the terms and conditions of the contract negotiated?

Whether or not the worker provides his or her own equipment?

Some points that are considered:

- What tools and equipment are required?
- Who provides the tools and equipment?
- Who pays for repairs and maintenance of the equipment?

Whether or not the worker could subcontract the work or hire assistants?

Some points that are considered:

- Can the worker choose and hire a substitute?
- Can the worker choose and hire a helper?
- Who pays for the helpers?

The degree of financial risk taken by the worker

Some points that are considered:

- Are expenses incurred? Are they reimbursed?
- Does the worker have expenses that are substantial enough so as to incur a loss?
- Does the worker have expenses related to the running of a business?
- Is the worker liable for negligence or inappropriate actions in the course of his work?
- Can the worker negotiate his salary with the payor?

The degree of responsibility for investment and management held by the worker

Some points that are considered:

- What capital investment does the worker have?
- Does the worker maintain a workspace?
- What kind of assets (related to the work) does the worker have?
- Does the worker manage anyone?
- Is the worker free to make decisions that affect his/her profit or loss?
- Does the worker have a business presence?

The worker's opportunity for profit in the performance of his/her tasks

Some points that are considered:

- Is the worker able to hire another person to perform the work at a lesser rate, thereby gaining a profit from the difference?
- Can the worker negotiate with the payor in order to obtain a higher payment or additional benefits?
- Is there a guarantee of work?
- Is the worker responsible for liabilities resulting from the employment contract (ie. Health and safety issues, third party liabilities)?

Other relevant factors

Some points that are considered:

- Intention of parties
- Contracts

Need more information?

CRA has a website with additional information about rulings.

The link is as follows:

<http://www.cra-arc.gc.ca/tax/home/cppeiexplain-e.html>

You can always request an official ruling if you are not sure of the nature of an employment status.

To ask for a ruling, simply call: Rulings (250) 363-0367 or Richard Soderquist, Manager, Revenue Collections, Vancouver Island Tax Services Office at (250) 363-3676. If you'd like to speak with someone in the Office of the Minister of National Revenue, call Germain Ouellette at (613) 995-2960.