# ENGAGEMENT OF INDEPENDENT CONTRACTOR PROCEDURE

## Engagement of Independent Contractor

**Contact Officer**  
Associate Vice-Principal, Finance

## Purpose

The purpose of this procedure is to:

- Provide standards and guidance to determine if a Service Provider (SP) qualifies as an independent contractor;
- Safeguard the university and its service providers from potential liability related to incorrect classification; and
- To outline the process to engage a SP once their status is determined.

A SP may be an employee of the university and may be considered an independent contractor, when sufficient evidence through the Independent Contractor Questionnaire demonstrates a separation between the services provided to the university, through their employment relationship and the services under consideration as an independent contractor.

## Scope

This Procedure applies to any employee who has the actual or delegated authority to engage a SP on behalf of the university.

This Procedure does not apply to guest speakers, incorporated entities, and performing artists/entertainers who perform dramatic or musical work for audiences, regardless of the service location within Canada or abroad.

## Definitions

### Employee

An employee is an individual who enters into an employment contract with the university on a full-time or part-time basis, for a specified or indeterminate period, in return for wages or a salary.

### Independent Contractor

An independent contractor is any Service Provider (SP) who does not have an employment relationship with the university. An independent contractor may operate as a sole proprietor, a partnership, or a company.

Note: The fact that a SP has their own business (even with a GST/HST number) does not prove that the SP is an independent contractor. Similarly, specifying the SP as an independent contractor in a written agreement is not sufficient, in itself, to classify the arrangement as a business-to-business contract for services (Independent Contractor) as opposed to a contract of service (employment).
A questionnaire developed by the university to gather information with respect to a SP necessary to assist in determining the SP’s status as either an independent contractor or an employee.

**Responsible Persons**

Persons who approve the engagement of SPs at the university, in accordance with the Policy on Approval and Execution of Contracts and Invoices.

**Service Provider or “SP”**

A person or entity, including a corporation, sole proprietor, partnership or an unincorporated business, who is at the relevant time, engaged to provide services to the university. A SP can also be an employee of the university.

Canada Revenue Agency presumes that all people who provide a service are employees unless there is evidence to support classification of the individual as an independent contractor. The Employment Standards Act (ESA) puts the burden on the university to prove an individual is a SP as opposed to an employee. Therefore, if the university engages an individual as an independent contractor to provide a service, it must be able to support this determination.

The determination of a SP’s status is a question of fact that requires an analysis of the circumstances of the particular case. The Canada Revenue Agency (CRA) has published the criteria and considerations for determining a SP’s status [https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4110-employee-self-employed.html](https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4110-employee-self-employed.html). The distinction between an employee and independent contractor is based on the particular facts of the case and is not always straightforward. Many factors need to be considered in the analysis of determining a SP’s status such as:

- Degree of control held by the payer
- If the worker owns and provides tools and equipment to accomplish the work
- If the worker can subcontract work or hire assistants
- If there are any fixed ongoing costs incurred by the worker or any expenses that are not reimbursed
- Whether the worker can realize a profit or incur a loss

It is impossible to capture all possible scenarios where the university might need to determine the status of a SP and accordingly, one must apply this procedure as well as the general principles outlined above to the particular facts in each case. As outlined in Appendix A, there are significant risks that flow from improperly characterizing a SP as an independent contractor when the terms of the engagement are indicative of an employment relationship.

**Procedure for Determining Service Provider (SP) Status**

**Procedural Steps for Responsible Persons**

**STEP ONE**

Responsible Persons must complete the Independent Contractor Questionnaire (ICQ) Form PAY-FRM-056 in conjunction with the SP. This step must be completed prior to entering into any engagement with a SP to provide services as an independent contractor.
**STEP TWO**

ICQ Result Indicates Employee

If the result of the ICQ is that the SP is an employee, the Responsible Person must follow the instructions posted on the Human Resources website on [Hiring an Employee](http://www.queensu.ca/humanresources/procedures/hiring-employees) to hire an employee, regardless of the dollar amount.

ICQ Result Indicates Independent Contractor

- **Contract for Services of $10,000 CAD or less**

  This step applies if the amount for the entire length of the contract for services will be $10,000 CAD or less.

  The Responsible Person will maintain a copy of the completed ICQ. Upon receipt of the invoice from the SP, the Responsible Person will submit a copy of the completed ICQ with each invoice and complete a Payment Request Form in acQuire for the payment to be processed.

- **Contract for Services of more than $10,000 CAD**

  If the amount for the entire length of the contract for services will exceed $10,000 CAD, a purchase requisition must be submitted through acQuire, along with the completed ICQ form. Responsible Persons must ensure that the [Procurement Policy and Procedure](http://www.queensu.ca/finance/services/procurement) is followed.

Note: The determination of a SP’s status based on a completed ICQ will be sufficient for all subsequent payments, provided there is no change in the general nature of the service arrangement and/or working arrangements. Responsible Persons are required to report any such changes to Financial Services and a new ICQ may be required prior to the issuance of further payment to the SP.

**STEP THREE**

Payments to SPs will be issued in accordance with their classification as either an employee or independent contractor. For additional assistance on paying independent contractors, please contact Financial Services at [http://www.queensu.ca/financialservices/procedures/making-payments](http://www.queensu.ca/financialservices/procedures/making-payments). For additional assistance on paying employees, please contact your Human Resources advisor.

<table>
<thead>
<tr>
<th>Responsibilities</th>
<th>Responsible Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Responsible Persons are responsible to complete the Independent Contractor Questionnaire (“ICQ”) for each circumstance in which there is a need to assess the proper status of a SP, and for sending the completed ICQ to Financial Services according to the “Procedure for Determining Service Provider (SP) Status” outlined above.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Financial Services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Financial Services is responsible to:</td>
</tr>
<tr>
<td></td>
<td>- Review the completeness of the information of each ICQ submitted to Financial Services, where the services provided for the entire length of the contract will exceed $10,000.</td>
</tr>
</tbody>
</table>
- Review and duly process invoices and payments submitted pursuant to Financial Services’ [Making Payments](#) Procedure (“How to Pay Independent Contractors” section).
- Provide advice and support to Responsible Persons on the following:
  - the application and interpretation of the tests for determining the proper status of a SP; and
  - the completion of the Independent Contractor Questionnaire “ICQ” form PAY-FRM-056 based on the particular circumstances of the arrangement being considered.

<table>
<thead>
<tr>
<th>Date Approved</th>
<th>Month Day Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approval Authority</td>
<td>PVP, VPOC, VP, Dean, etc.</td>
</tr>
<tr>
<td>Date of Commencement</td>
<td>Year Month Day</td>
</tr>
<tr>
<td>Amendment Dates</td>
<td>List the dates the policy has been amended (Year Month Day)</td>
</tr>
<tr>
<td>Date for Next Review</td>
<td>Year Month Day</td>
</tr>
</tbody>
</table>
| Related Policies, Procedures and Guidelines | Hiring an Employee  
Making Payments  
Policy on Approval and Execution of Contracts and Invoices  
Procurement Policy and Procedure |
Appendix A

Risks that flow from improperly characterizing a SP as an independent contractor when the terms of the engagement are indicative of an employment relationship:

a) **Income Tax Act (Canada):** Failure to deduct and remit required income tax from employment income under the *Income Tax Act (Canada).* This can result in the university being required to pay unpaid taxes, as well as penalties and interest. The SP may also have their taxes reassessed.

b) **Canada Pension Plan:** Failure to deduct and remit required Canada Pension Plan (CPP) contributions under the *Canada Pension Plan.* This can result in the university being required to pay both the employee and employer shares, plus penalties and interest.

c) **Employment Insurance Act:** Failure to deduct and remit required Employment Insurance (EI) premiums under the *Employment Insurance Act* can result in the university being required to pay both the employee and employer shares, plus penalties and interest.

d) **Ontario Employer Health Tax Act:** Failure to calculate and remit required Employer Health Tax (EHT) premiums under the *Ontario Employer Health Tax Act* can result in the university being required to pay any unremitted premiums, plus penalties and interest.

e) **Workplace Safety and Insurance Act:** Incorrectly classifying a SP as an independent contractor can result in the university being required to reimburse the government for any amounts paid to the SP under the *Workplace Safety and Insurance Act* if the SP suffers a workplace injury or illness. The university could also be held responsible for any unremitted premiums, interest, and additional penalties.

f) **Employment Standards Act:** Incorrectly classifying a worker as an independent contractor can create liability for non-compliance with *Employment Standards Act* requirements such as overtime pay, statutory holiday pay, vacation pay, notice of termination and severance pay, etc.

g) Incorrectly classifying an employee as an independent contractor can create liability for common law reasonable notice of termination (subject to contractual provisions).