

Independent Contractor, Dependent Contractor, or Employee?

The Canada Revenue Agency (CRA) may judge an independent contractor to be an employee. If this happens, the employer must remit unpaid taxes, may be subject to penalties and interest, and be responsible for all unremitted CPP and EI premiums.

The CRA's 4-point test:

1. Control:

In the delivery of the contract, who controls the work? An independent contractor should control the work – the method of the work and the delivery of the work. In delivering the contract, the independent contractor should also be able to subcontract the work or hire employees to complete the contract work on their behalf.

2. Ownership of Tools:

The ownership of tools and equipment is associated with a business relationship. An independent contractor supplies the tools and equipment required to complete the work.

3. Chance of Profit or Risk of Loss:

An independent contractor has an opportunity to make a profit and runs the risk of incurring losses due to bad debts, damage to equipment, materials, or delays. Employees do not cover their operating costs. It is important to note that the Ontario Broader Public Sector Expense Directive states that "In no circumstances can hospitality, incidental or food expenses be considered allowable expenses for consultants and contractors...or in any contract between an organization and a consultant or contractor."

4. Integration:

The existence of multiple clients can be sufficient proof to the CRA that the independent contractor is not integrated with a client. An independent contractor who can not prove they have more than one client may be declared by the CRA to be in an employer/employee relationship with the client or to be a personal service corporation for the client.

Reliance or exclusivity on one client may result in the independent contractor being deemed a dependent contractor and potentially entitled under common law to notice of termination or severance from the client.