

## EMPLOYEE/INDEPENDENT CONTRACTOR PAYROLL POLICY

### Purpose

StFX has developed a policy to provide guidance on the appropriate methods of payment for services provided to StFX University and whether or not an employer/employee or independent contractor relationship exists in connection with the provision of those services.

### 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.

The definition of the relationship is important as it determines which type of payment will occur. An employer/employee relationship requires payment to be reported on a T4 (payroll); a contract relationship with an individual requires payment to be reported on a T4A (accounts payable); a contract relationship with an external company or firm requires payment of an invoice through accounts payable. A more detailed description of scenarios is contained in Appendix 2.

### Introduction

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 endeavors to provide the greatest flexibility regarding tax treatment while at the same time honoring its statutory obligations.

Where an employer/employee relationship exists in respect of the performance of services, the University is required by law to provide statutory benefits (CPP and EI) 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.

The specific criteria or tests used to determine the existence of an employer/employee relationship are briefly explained in **Appendix 1** (pg 3). When there is uncertainty or a difference of opinion about whether an employer/employee relationship exists, **Human Resources** should be consulted with prior to arrangements being concluded.

### WHAT ARE THE CONSEQUENCES OF INCORRECTLY CHARACTERIZING AN INDIVIDUAL AS A CONTRACTOR AND NOT AN EMPLOYEE?

Significant costs could accrue to the University, as the University would be liable for unremitted taxation amounts, Canada Pension Plan payments, Employment Insurance Act contributions, and Workplace Safety and Insurance Act (WSIA) payments. Should there be a problem with the quality of the work performed by the 'contractor', the University may be liable for that

individual's errors or actions, as if that person were an employee. There is also the possibility that the individual could later claim to be an employee and is subsequently able to successfully claim severance or payments in lieu of notice should a 'contract' not be renewed.

### **Payments to individuals**

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** on pg 3).

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.

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 not a resident of Canada a T4ANR will be issued and non-residents tax will be withheld unless a waiver is obtained.

### **Payments to independent contractors**

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.

If the contract for services is with an independent contractor, an Independent Contractor Agreement may be required. Payment to the contractor will normally be made following approval of invoices submitted under the terms of the Independent Contractor Agreement (ICA).

### **Summary Chart**

The Summary Chart, attached in **Appendix 2** (pgs 5 to 8), 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 the department concerned shall consult with the Director of Human Resources, who shall make the decision on the method of payment.

### **Interpretation**

Questions of interpretation or application of this policy or its procedures shall be referred to the Director of Human Resources, whose decision shall be final.

## APPENDIX 1

### IS IT AN INDEPENDENT CONTRACTOR OR EMPLOYER-EMPLOYEE RELATIONSHIP?

The circumstances under which services are rendered determine an individual's classification as either an independent contractor or an employee. It is the department's responsibility to ensure that appropriate evidence has been gathered to support the position that the University has engaged an independent contractor.

The following criteria, established by CRA (Canada Revenue Agency) must be considered:

- a. Control
- b. Ownership of tools and/or equipment
- c. Chance of profit/risk of loss
- d. Integration

#### **Control**

In an employee-employer relationship, the University controls, directly or not, the way the work is done and the work methods used. The University assigns specific tasks that define the real framework within which the work is to be done. If the University does not directly control the individual's activities, but has the right to do so, the notion of control still exists.

The degree of control and supervision by the University is not in itself a determining factor. For example, the general freedom of a professor to teach and examine their students is not exceptional for a modern university today. Therefore, a professor who has the discretion to establish the course content, who is under the jurisdiction of the Dean of the Faculty, but who does not attend Faculty meetings is an employee of the University.

The University exercises control if there is the right to hire or fire, determine the wage or salary to be paid, and decide on the time, place and manner in which the work is to be done. The University may control:

- the hours of work;
- the assessment of the quality of the work;
- the individual's periodic activity reports;
- the list of clients and the territory covered;
- training and development

In a business relationship, however, the University does not usually exercise control over the individual's activities. The individual can decide how the work will be performed.

#### **Ownership of Tools and/or Equipment**

In an employer-employee relationship, the University generally supplies the equipment and supplies required by the employee; a computer, a telephone listing in StFX directory, a StFX e-mail address, StFX business cards or clerical support. In addition, the University covers the following costs related to their use: repairs, insurance, transport, rental and operation.

In a business relationship, individuals generally supply their own equipment and tools and cover costs related to their use. When workers purchase or rent their own equipment or large tools that require a major investment and costly maintenance, it usually indicates that they are self-

employed individuals, because they may incur losses when replacing or repairing their equipment.

If the University is supplying the tools and equipment and there is no risk of loss for the individual, an employee-employer relationship probably exists.

### **Chance of Profit/Risk of Loss**

In an employer-employee relationship, the University assumes the risk of loss. The University also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, and delivery and shipping costs. The employee does not assume any financial risk and is entitled to his full salary or wages regardless of financial health of the University.

In a business relationship, the independent contractor/consultant may make a profit or incur a loss and will also cover operating costs. There is no guarantee of a steady income or allowance for fringe benefits because the self-employed individual's income depends on the result achieved by the end of the contract. The potential that unforeseen expenses or hours of work will have to be absorbed in a fixed-price contract may indicate a self-employed status.

### **Integration**

Integration should be considered from the point of view of the individual and the University.

Where the individual integrates the University's activities into their own commercial activities, a business relationship probably exists. The individual is acting on their own behalf, is not dependent on the University's business and is sole proprietor of their own business. In most cases, the individual has business with more than one client.

Where the individual integrates their activities to the primary activities, including instruction and research broadly defined, of the University, an employer-employee relationship probably exists. The individual is acting on behalf of the University, is connected with the University's business and is dependent on it. If the work done is an integral part of the University's business, the individual is an employee.

## APPENDIX 2

### SUMMARY CHART FOR TREATMENT OF PAYMENTS

Information below in the **Type of Payment** column refers to payments through either the payroll process or the accounts payable process. Employees are paid through payroll pursuant to the submission of appointment forms. Vendors, including independent contractors, are paid through accounts payable pursuant to the submission of invoices or cheque requisitions.

<b>A. Full-time Academic Appointments</b>	<b>Type of Payment</b>
All individuals appointed under Full-time Academic Appointments are considered employees of the StFX University.	Payroll, (T4)
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>B. Part-time Instructors for Credit Courses</b>	
1. <u>SfFX University 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)
2. <u>Individuals</u> : All individuals appointed as part-time instructors are considered employees of the University.	Payroll, (T4)
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	Accounts Payable
b) where there is only one individual involved in the business	Payroll, (T4)
4. <u>Partners of Firms with Direct payment to Partnership</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 and the University is paying the partnership	
a) and no particular individual is specified	Accounts Payable
5. <u>Partners of Firms with Direct payment to Individual</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 and the University is paying the individual and a particular individual is specified	Payroll, (T4)
6. <u>Employees of a Firm</u> : Where a part-time instructor is an employee of an enterprise (incorporated or not, a partnership or government)	
a) but the contract is with, and has resulted from, direct negotiations between the individual and the university.	Payroll, (T4)
b) but the contract is with, and has resulted from, direct negotiations between the enterprise and the university and payment is made directly to the enterprise and the individual is acting in the capacity of an employee of the enterprise.	Accounts Payable
c) but the contract is with, and has resulted from, direct negotiations between the enterprise and the university and	Payroll, (T4)

payment is made directly to the individual and the individual is acting in the capacity of an employee of the university.	
<b>C. Non-credit Short Courses and Special Seminars or Workshops not related to the day-to-day academic programs of the university</b>	
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)
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) St. F.X. University employees and others engaged as independent contractors	Accounts Payable(T4A)
b) when individuals are seconded from another educational institution or government entity	Accounts Payable
<b>D. Guest Lecturers/Speakers</b>	
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)
<b>E. Consulting</b>	
Consulting is the provision of professional or expert advice. It does not include teaching.	
1 <u>St. F.X. University employee hired as consultant:</u>	
a) for additional services which are of the type of service provided in the normal course of duties under existing employment contract;	Payroll (T4)
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)
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>	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	Accounts Payable
b) where there is only one individual involved in the business	Accounts Payable
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
b) and a particular individual is specified	Accounts Payable
<b>F. Artistic Performances</b>	

1. Individual performers where the University determines the nature of the performance;	Payroll (T4)
2. Individual Performers where the University does not determine the nature of the performance;	Accounts Payable (T4A)
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
<b>G. Non-instructional Services</b>	
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 stag props for a play, etc.	
1. <u>St. FX. University employees</u> where service is of the type of service provided in the normal course of duties under existing employment contract	Payroll (T4)
2. <u>All other individuals</u>	
a) where only individual's time is purchased and specific tasks are assigned	Payroll (T4)
b) where fee is predicated upon quantity e.g. number of interviews completed, pages prepared, papers marked, etc.;	Accounts Payable (T4A)
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)
d) individuals operating as professional businesses, such as health care, accounting or legal professionals, who invoice the University.	Accounts Payable
<b>H. Research (Grants and Contracts)</b>	
1. <u>Principle Investigator</u>	
a) research forming part of the individual's regular academic appointment with St. F.X. University	Payroll (T4)
b) Payments for research from research contracts and grants, 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, the research payment to the individual is provided by the sponsor who is independent of the University and the ultimate responsibility for the research rests with the Principle Investigator.	Accounts Payable (T4A)
<p>A separate agreement must be entered into between the individual and the University, signed by the Principle Investigator, the Dean and the Vice-President, or designate, where it is certified that all of the following apply:</p> <ul style="list-style-type: none"> <li>i) the income does not support the person's academic appointment;</li> <li>ii) responsibilities under the Prime Research Contract from which the payments are derived are not part of the Principle Investigator's usual employment responsibilities;</li> <li>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;</li> <li>iv) the Sponsor of the Prime Research Contract is an entity external to the University and shall pay the costs of research;</li> <li>v) the Prime Research Contract outlines a defined task to be</li> </ul>	

<p>carried out;</p> <p>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;</p> <p>vii) the control over or direction of the research rests with the Principle Investigator.</p>	
<p>2. <u>St. F.X. University Employees</u>: where service is of the type of service provided in the normal course of duties under existing employment contract</p>	Payroll (T4)
<p>3. <u>STFX employees and non employees who deal at arm's length with the University</u>:</p>	
<p>a) i) where only the individual's time is purchased and specific tasks are assigned;</p>	Payroll (T4)
<p>b) ii) where the fee is predicated upon quantity produced, e.g., number of interviews completed, pages typed, etc.;</p>	Accounts Payable
<p>c) 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;</p>	Accounts Payable
<p>d) iv) where the individual operates as a professional business, such as health care, accounting or legal professional, who invoices the University</p>	Accounts Payable

It should be emphasized that the method of reporting the payment by the university do 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.