



<b>POLICY NAME</b>	<b>EMPLOYEES VS SELF EMPLOYED &amp; INDEPENDENT CONTRACTORS POLICY</b>
<b>Revision</b>	V1.3
<b>Publication Date</b>	December 1, 2006
<b>Revision Date</b>	July 31 <sup>st</sup> , 2023
<b>Effective Date</b>	July 31 <sup>st</sup> , 2023

## **PURPOSE AND SCOPE**

The purpose of this policy is to clarify the distinction between a “McGill employee” and a “self employed/independent contractor.” A clear distinction will assist our faculties, departments, and administrative areas to submit payment for work performed, services rendered, and/or consulting services. Furthermore, proper identification will ensure the University’s compliance with the respective taxation requirements and legislations.

Refer to the Procedures for details regarding the implementation and interpretation of the following policies.

Note: This policy does not apply to services rendered outside Canada.

## **POLICY**

### **P1. Employees**

- P1.1** Employers are required to withhold at source income tax and social security premiums from payments to “employees” and remit the amounts withheld to the tax authorities. Therefore, payments to “McGill employees” will be subject to withholdings for Federal and Provincial income taxes as well as Quebec Pension Plan (QPP) and Employment Insurance (EI) premiums.
- P1.2.** In addition to remitting the amounts withheld to the tax authorities, the University will remit employer contributions to the above noted social security programs as well as to the Quebec Health Services Fund (RAMQ), the Manpower Training Program (FNFMO), the Labour Standards Board and the Workers Compensation Board (CSST).
- P1.3.** Where eligible, employees may participate in the University’s staff benefit programs such as life, health and dental insurance, long term disability insurance, vacation policies, and a number of other programs. Under such circumstances, the University will withhold directly from their remuneration any premiums which the employees are responsible to pay.

### **P2. Non-Employees**

- P2.1.** The University is not required to make contributions to any of the above social security programs in respect of “self-employed” workers, “independent contractors” and/or “consultants”.
- P2.2** Such individuals are not considered and/or covered by any McGill benefit programs. The required income taxes and premiums to the QPP, EI, RAMQ, CSST, FNFMO, medical and life insurance and other benefits become the full responsibility of the self-employed worker/independent contractor/consultant. It should be noted, premiums paid by self employed individuals, independent contractors or consultants for various benefit programs may be claimed, along with other valid work-related expenses, as a deduction against income for tax purposes.

### **P3. Changes in status of an individual**

**P3.1.** The University will not retroactively change the status of an individual from employee to self-employed/independent contractor/consultant or vice versa for whatever reason other than an assessment from the Canada Revenue Agency and/or Revenue Quebec. All non-remitted amounts assessed including income taxes, QPP and EI premiums, as well as any fines, penalties or retroactive charges will be borne by both the department concerned and employee as required by the relevant statute.

### **P4. Awards and Prizes**

**P4.1.** The University payments for Scholarships, Bursaries, and Fellowships to students and staff are outside the scope of this policy due to the fact that awards and prizes do not constitute income from employment. Such payments have their own definitions and tax treatment in accordance with the Federal and Quebec Income Tax Acts and other Acts governing the various social security programs.

## PROCEDURES

### PR1. Administrative Responsibility

The determination of an individual's status (employee vs. self-employed/independent contractor/consultant) is the joint responsibility of the Human Resources Payroll Office and Financial Services, with Procurement Services participating as a monitor. Any dispute will be resolved by the University Controller.

### PR2. Determination of Employee vs. Self-Employed/Independent Contractor

**PR2.1.** The determination of an individual's employment status is sometimes not evident and requires an analysis of the facts and circumstances surrounding the particular case. In many cases however, there may be trends in the individual's relationship with the University which will point to a determination of either "employee" or "independent contractor."

**PR2.2.** Whether an employer-employee relationship exists between two parties is a question of fact. In making such a determination the terms and conditions of an individual's employment are generally analyzed by the tax authorities in relation with the following four factors<sup>1</sup>: degree of control by the company<sup>2</sup>, ownership of tools used to render services<sup>3</sup>, chance of profit and risk of loss<sup>4</sup> and the integration of the individual into the company's business<sup>5</sup>. No one single factor is decisive in determining an individual's employment status. Rather, in analyzing each case the context of the exact relationship between the individual and the University must be taken into account and all of the above factors must be considered. If in doubt, individuals will be treated as employees.

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<sup>1</sup>The following factors were developed by the court (Wiebe Door Services Ltd. v. M.N.R., 87 DTC 5025) in deciding whether a particular contract was a contract of services (employer/employee relationship) or a contract for services (client and independent contractor relationship).

<sup>2</sup>A person exercises control if he has the right to hire or fire, determines the wage or salary to be paid and decides on the time, place and manner in which the work is to be done. The employer may control the hours of work, assess the quality of work, the worker's periodic activity reports, the list of clients and the territory covered, training and development, etc. Further, the employer would generally plan the work

to be completed, supervise the tasks and set the standards to be met.

<sup>3</sup>The employer generally supplies the equipment and tools required by the employee.

<sup>4</sup>Generally the employer assumes the risk of loss and the responsibilities for the performance of the work, and covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, delivery and shipping costs.

<sup>5</sup>An individual integrating his activities to the commercial activities of another person will likely be determined to be an employee of that person. An individual integrates a person's business when he is hired to perform work similar to other employees, when he is on the telephone list, is invited to activities (e.g. Christmas party), has business cards, represents the client, etc.

## **Elaboration of Factors to determine the status of a worker**

### **PR2.2.1. Degree of Control**

In an employer-employee relationship, the employer has the right to direct and control the worker in the way the work is done by instructing the worker when, where and how the work will be performed. It is not necessary that immediate control be exercised at all times, as long as the employer has the right to exercise this control, if and when the employer wishes to do so. Furthermore, the degree of control exercised by the employer may vary depending on the type of work performed and the employee's experience and skill. However, the more control over a worker, the stronger the case will be that the worker is an employee. As well, if a formal subordination or relationship of authority in the work place exists (i.e. subordinate vs. supervisor roles) this would also confirm "employee" status.

### **PR2.2.2. The ownership of tools used to render services**

In an employee relationship the employer will usually provide the tools necessary to accomplish the work. In a University environment, tools include computers, communication equipment such as a telephone set and a cellular phone, photocopiers, laboratory equipment and books when purchased with University funds and maintained at the University's expense. It should be noted that the fact that a worker may use his own tools in performing his duties is not sufficient to say that he/she is an independent contractor. In fact, in many occupations it is customary for the worker to use his or her own tools. However, a person routinely working out of premises provided by the payer, rather than in his or her own premises is likely to be considered an employee as opposed to a self employed individual or a contractor.

### **PR2.2.3. Chance of profit and risk of loss**

An independent contractor generally assumes all risk of loss that may result from events that occur during the course of the work and that were not (or could not have been) foreseen when the contract was negotiated. If, on the other hand, the work is completed sooner or more efficiently than expected, the independent contractor may realize a greater profit. In other words, a self employed individual or contractor stands to benefit directly from productivity gains or speedy delivery, but will also bear the risk of failure to deliver or undue delays in delivery. In an employee-employer relationship, the chance of profit and risk of loss rests with the "employer".

### **PR2.2.4. Integration of the individual into the payer's business**

An employee generally integrates his activities to the commercial activities of his employer, whereas, an independent contractor generally acts independently from the payer's business activities (even though the work is performed for the payer). Performing work which is similar to work performed by University employees, being on the University's telephone directory, having University business cards, participating in employee social activities are all indicators that an individual is an employee rather than a self-employed individual or independent contractor. In essence, a self-employed individual/contractor is a person who is hired to accomplish a specific job in a given period of time, and then moves on to another contract for another party.

**PR2.2.5. Additional criteria that can be used**

- (a) Does the individual occupy a recognized position at the University or associated hospital for which the individual is remunerated on a regular basis through a McGill payroll cheque or bank deposit? Individuals occupying recognized positions at the University are generally “employees”.
- (b) Does the individual occupy a University office, classroom, laboratory or other specific space to conduct their work? Does the individual have a University telephone line and/or email address? If, yes, the individual is likely an employee.
- (c) Is the individual required to work regular working hours? Self-employed individuals/independent contractors generally have discretion over their work schedule.
- (d) Are the services rendered for the University a significant source of income for the individual when compared to his or her other sources of income. If yes, it is increasingly unlikely that the individual is an independent contractor
- (e) Does the individual perform tasks that are covered by a collective or any other agreement? If yes, the individual is likely an employee.
- (f) Is the individual covered by any University staff benefit programs, e.g. Life, Health, LTD, Dental insurance, tuition assistance and vacation policies? Employees are entitled to University benefits, whereas, contractors or self-employed individuals most definitely are not.
- (g) Was the service rendered outside of Canada? If yes, the payment is not considered employment income.

### **PR2.2.6. Clarification on the area of Teaching, Instruction and Speaking Engagements**

In the broad area that encompasses teaching, instruction, speaking engagements etc., the following accepted rules delineate between employee and self-employed/independent contractor and are to be followed.

- (a)** Recognized definition of a “teacher.” Without limiting the scope of this definition, by “teacher” we mean: Any person hired to teach by McGill University. It can apply to a professor, educator, lecturer, course lecturer, and instructor etc. For the purpose of these guidelines, they will be referred to as “teachers”. Teaching staff are generally hired under a contract of employment. A teacher may have multiple, and successive contracts. Teachers are almost always considered employees. An exclusion example would be that of a course lecturer engaged through an outside legal entity, where the legal entity is remunerated rather than the individual.
- (b)** Recognized definition of a “speaker.” Individuals identified as guest lecturers, part-time speakers, presenters and similar functions may be recognized as self-employed, provided they are not an employee of the University in another capacity, or do not hold a University appointment. For the purpose of these guidelines, they will be referred to as “speakers.” Speakers generally give one or two lectures for the University and are typically not under contract to the University.



### **PR2.3. Questionnaire**

**PR2.3.1.** A questionnaire has been developed to assist in the determination of “employee” vs. “self-employed/independent contractor.” This is the most recent version of the questionnaire (available at the end of this document).

**PR2.3.2.** The questionnaire will form an integral part of the payment process. It must be completed and signed by every individual claiming self employed/independent contractor status and submitted to the University prior to the due date of the first payment.

**PR2.3.3.** The completed questionnaire can be used to make all subsequent payments, provided there is no change in the general nature of the contractual agreement and/or working arrangements. However, as a minimum, it must be submitted every 12 months following the first submission.

### **PR3. Administrative Process**

**PR3.1.** In all cases where the University is invoiced for the services rendered of an individual (except if ‘Inc.,’ ‘Limited,’ ‘Corporation,’ or ‘Incorporated’ is appended to the payee name), there must be a determination as to whether the payee would be considered an employee by tax authorities.

**PR3.2.** All such payments are reviewed by Financial Services. If the case is ambiguous, the unit requesting the payment will be asked to complete a questionnaire in conjunction with the payee in order to determine “employee” vs. “self-employed/independent contractor” status.

**PR3.3.** The questionnaire must be completed, signed and submitted to the University prior to the due date of the first payment. Once assessed by the responsible central unit(s), the invoice will be directed for processing to either Payroll or Procurement Services/Accounts Payable.

**PR3.4.** The completed questionnaire can be used to make all subsequent payments, provided there is no change in the general nature of the contractual agreement and/or working arrangements. Any change in status of the payee and their working relationship with the University must be communicated to the Accounting Department by the unit requesting payment.

## **PR4. New Vendor Request**

**PR4.1.** Before a new supplier is enabled within the University's system to receive purchase orders and invoice payments, an assessment similar to that described in procedure PR3 above will be applied.

**PR4.2.** Units complete the [New Supplier Request](#) form to create a Vendor ID in the Banner Financial Information System. This request form captures information about the provision of personal and/or professional services, and identifies if such services are rendered by a McGill employee.

## **PR5. Incorporated Business Employing a McGill Employee**

**PR5.1.** If the University is billed by an incorporated business for personal and/or professional services, and that business is employing a regular McGill employee, an attestation (available at the end of this document) is required by a signing officer of that corporation. The exact nature of the services to be performed must be provided, along with incorporation documents to confirm the entity is registered.

**PR5.2.** It should be noted that employees whom are invoicing their employer via an incorporated company for services rendered may risk a restriction on deductible expenses and be subject to penalties and interest if Canada Revenue Agency or Revenue Quebec deems the incorporated company to be a Personal Service Business. Please consult a tax professional for other related potential consequences.

## **PR6. Links to Related Documents**

[Questionnaire: Determination of Employee vs. Self-Employed/Independent Contractor](#)

[Attestation: Incorporated business providing services to McGill University](#)

[New Supplier Request form](#)