

# Contractor Status Policy

**Category:** Human Resources

**Approval:** PVP

**Responsibility:** Associate Vice-President, Human Resources

**Date:** March 1, 2006

**Definitions:**

**Business Entity:**

- (i) A company which is incorporated and has limited liability. The name of the company ends with Limited, Incorporated or Corporation, or
- (ii) an unincorporated business which has received a favourable Canada Customs and Revenue Agency (CPT-1) ruling. Generally, professional business entities cannot be incorporated; e.g., partnerships with personal liability (accountants, lawyers, doctors).

**Unincorporated Business:**

- (i) Businesses registered with the Ministry of Consumer and Business Services. They do not have limited liability and are not recognized as a separate legal entity by Canada Customs and Revenue Agency and the Income Tax Act, or
- (ii) an individual who provides products or services outside of an employee/employer relationship.

**Purpose/Reason for Policy:**

Canada Customs and Revenue Agency presumes that all individuals who provide a service are employees unless there is evidence to support classification of the individual as an independent contractor. Therefore, if the University engages an individual as an independent contractor, it must be able to support this position. Determining independent contractor status is driven by facts and circumstances. The facts and circumstances that make one individual an independent contractor may differ from those that make another individual an independent contractor. In broad terms the two areas to consider are:

- The relationship between the person providing the service and the person using it; and
- The relationship between the service provided and the University's business. Please see [www.cra-arc.gc.ca/E/pub/tg/rc4110-06e.pdf](http://www.cra-arc.gc.ca/E/pub/tg/rc4110-06e.pdf)

There are numerous court cases related to this topic. An Independent Contractor Form (ICON form) has been developed to help in the determination process. As a general rule, employees may not be treated as independent contractors when providing services to the University, even if the services are outside of the normal duties of their position. Separate employment contracts should be established in these circumstances.

Should an individual disagree with his/her status as determined by this policy, he/she has the option of completing a Canada Customs and Revenue Agency CPT-1 form (Request for a Ruling as to the Status of a Worker –The purpose of completing this form is to obtain a ruling as to whether he/she is

an employee for purposes of the Canada Pension Plan and/or is in insurable employment for the purposes of the Employment Insurance Act. This form is available from Canada Customs and Revenue Agency. See [www.cra.gc/forms](http://www.cra.gc/forms)

If you are hiring a non-resident of Canada to perform work, please consult Human Resources for special regulations.

### Scope of this Policy:

All persons employed in any capacity at Trent will be assumed to be an employee unless proven otherwise and must be employed in accordance with the University's hiring practices and government regulations. Contractor status will only be allowed if compelling evidence is provided to support the classification of an individual providing a service as an independent contractor.

### Policy Statement:

It is the department/account holder's responsibility to ensure that appropriate evidence has been gathered to support the position that the University has engaged an independent contractor. An employer who fails to deduct the required CPP contribution and EI premiums must pay the employees and employers share plus a penalty. All related charges and any penalties that result from the failure to withhold statutory deductions will be charged to the department.

Arrangements to engage a business entity must be made with a purchase requisition before commencement of the work. Competitive bids may be required before a purchase requisition can be issued. Please see Purchasing policy or contact Financial Services for details.

### Determining Status

1. Use Chart A on following pages to identify whether an employee/employer relationship clearly exists. If the circumstances of a specific situation are not covered in the chart, contact Human Resources.
2. After determining the employee/employer relationship use Chart B to determine the method of payment.

An ICON form must be completed by unincorporated businesses and signed by the department and the contractor, to verify that an employee/employer relationship does not exist. The only exception is with respect to goods purchased from an unincorporated business with an established business location where the goods are produced or sold.

Once an unincorporated business has completed an ICON form and been confirmed as an independent contractor, the form does not have to be completed again when products or services are provided by the same business or individual under the same terms and conditions.

Payments to businesses are made by invoice. A purchase requisition must be submitted to Purchasing, along with a completed ICON form. Purchasing will then forward a purchase order to the business. After the service is complete the business will present an invoice for payment.

Payments made to individuals, considered to be independent contractors, are processed through Accounts Payable and the individual will receive a T4A through Payroll.

Prior to the selection of a business, competitive bids may be required before a purchase order can be issued. See the Purchasing policy.

3. When engaging a business entity, cheques issued by Financial Services must be paid to the order of the business entity (not an individual).
4. Payments of employment income are processed through Human Resources using a Hiring Requisition form.

**Contact Officer:**

Associate Vice-President, Human Resources

**Date for Next Review:**

March 2019

**Related Policies, Procedures & Guidelines**

- a) N/A

**Policies Superseded by This Policy:**

- a) N/A

## Chart A

Use the chart below to assist in determining whether a situation involves employees or independent contractors. Once the status is determined, use Chart B to determine the method of payment.

### INSTRUCTIONAL SERVICES

#### Type of Service Provided Employee Independent

##### Contractor

Type of Service Provided	Employee	Independent Contractor
Teaching	X	
CUPE 1 & 2 collective agreements	X	
Guest Lecturer (see definition) Part-time Instructors Professional Course Instructors		X

### NON-INSTRUCTIONAL SERVICES

Type of Service Provided	Employee	Independent Contractor
As long as one employment contract is in effect, the individual will be considered an employee for all assignments. Multiple assignments may be established through separate employment contracts. Independent Contractor status may be allowed in exceptional situation, with the approval of the appropriate Vice President.	X	
<b>An individual's</b> time is put at the disposal of the university for a fixed or indeterminate time, e.g. invigilation, course coordinator. Factors to consider – does the individual get paid a regular salary (hourly, biweekly, monthly); have set hours; work at the university, provided with supplies and equipment.	X	
<b>Businesses or individuals</b> , other than Trent employees, paid a fee to provide specified products or services (deliverables), e.g. consulting services, statistical analysis, conducting interviews, producing a textbook, developing a computer program. Factors to consider - is work done away from university; does business or individual pay own expenses; paid a fee; free to use the services of others.		X

## RESEARCH

Type of Service Provided	Employee	Independent Contractor
<p><b>A Trent employee</b> engaged in research as part of normal course of duties under an existing employment contract</p>	X	
<p><b>Individual</b> provided with remuneration from an externally funded research agreement. The research is not carried out in the normal course of duties under an existing employment contract. The individual contracts with Trent concerning the administration of funds and use of facilities and equipment.</p>		X
<p><b>Research Project Personnel</b> engaged in research under the direction, guidance or supervision of a Trent representative, and are not students carrying out research related to degree requirements. Factors to consider - appointed for a fixed period of time, regularly engaged in research at the university, receives regular biweekly or monthly payments, provided with supplies, equipment, office space, e-mail account, etc.</p>	X	
<p><b>Individuals</b>, other than Trent employees, engaged in independent research, or provided with a sub-grant from funded research to carry out a specified research activity. Factors to consider - does not provide general assistance to a Trent Representative; provided with a lump sum sub-grant; is free to use the services of others; pays own expenses.</p>		X
<p><b>Individuals or businesses</b>, other than Trent employees, paid a fee for specified products or services, e.g. manufacturing tools or equipment for research, conducting statistical analysis, conducting interviews, etc. Factors to consider - work is normally done away from the university; individual or business pays own expenses (including equipment and supplies) and is free to use the services of others.</p>		X
<p><b>PERFORMING ARTIST</b> (not otherwise employed by the University)  <b>Member of a non-related performing group</b> to which a direct payment is made.  <b>Individual</b> - Canada Customs and Revenue Agency Interpretation Bulletin IT-525 applies.            Consult HR</p>		X

If hiring a non-resident of Canada, please consult Human Resources for special regulations.

## Chart B:

Use the chart below to determine the appropriate payment methodology.

Type of Relationship	Position Requisition (T4)	Honorarium Payment Form (T4A)	Purchase Requisition (Invoice)
<b>Employee/Employer</b>	X		
<b>INDEPENDENT CONTRACTOR</b>			
Business Entity			X
Unincorporated Business – Payment to Business			X
Unincorporated Business – Payment to Individual		X	
Unincorporated Business – Payment to individual with BIN number or HST number			X

### How to Complete the ICON Form

1. The department/account holder sends a copy of the ICON form (form) to the individual that will be performing services. This form is not required when contracting with a business entity (see definition) or with respect to goods purchased from an unincorporated business with an established business location where the goods are produced or sold. Forms are available from Purchasing website see [www.trentu.ca/purchasing/forms](http://www.trentu.ca/purchasing/forms)
2. The potential independent contractor completes the form, signs it, and returns it to the department/account holder.
3. The department reviews the form for completeness (i.e. all questions on the form have been answered) and accuracy. The form is accurate when the person most familiar with the potential independent contractor reviews the form and attests to the accuracy of its content.
4. Based upon the information provided on the form (and any other relevant information available), the department/account holder determines if the individual meets the independent contractor criteria.
5. In making this determination, “yes” answers to questions 4 through 16 are indicative of independent contractor status. Thus, if all or a majority of these questions are answered “no”, it should be obvious that the individual most likely does not meet the independent contractor criteria.
6. In reviewing the answer to question 17, the department/account holder should assess whether the service being provided is one that is normally provided by independent contractors (in the context of the University).
7. In reviewing question 19, longer terms of service are strong indicators of employment status. However, the above, by itself, is not determinative.

8. If the independent contractor criteria are met:
  - (a) The departmental University employee/account holder most familiar with the independent contractor signs the form to indicate concurrence as to the form's accuracy. This signature is required.
  - (b) The department sends the ICON form and a Purchase Requisition (with all required signatures) to Purchasing.
9. If the independent contractor criteria are not met, the department must hire the individual as an employee through Human Resources.
10. An independent contractor operating under their own name without BIN number or HST number will be issued a T4A.

**INDEPENDENT CONTRACTOR FORM (ICON)**

Note: This form is intended to assist departments in the determination of employment status. It is to be completed prior to the first assignment only, unless there is a substantive change to the type of work performed.

**ICON FORM**

**Part I** - To be completed by prospective independent contractor

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Postal Code: \_\_\_\_\_

E-Mail: \_\_\_\_\_

1. Are you legally entitled to work in Canada? Yes No
2. Are you currently employed by Trent University? Yes No
3. Are you related to an employee at Trent University who may have influence in the decision to enter into a contract with you? Yes No

If yes, provide name: \_\_\_\_\_

4. Do you pay for office space outside your home? Yes No

If yes, provide the address:

\_\_\_\_\_

5. Have you provided services similar to those being provided to the University for other customers as an independent contractor during the past twelve months? Yes No

If yes, list:

\_\_\_\_\_

6. Will you perform a substantial portion of the services at a site that is off the University premises?

Yes No

7. Do you have a business license or professional designation? (e.g., CA, LLB, PEng).

Yes No



8. Do you advertise your services to the public? Yes No  
If yes, how? (e.g., Yellow Pages) \_\_\_\_\_
9. Do you pay your own employees? Yes No  
If yes, do you carry Worker's Compensation Insurance?  
\_\_\_\_\_
10. Will you provide any necessary materials, supplies, stationary, telephone, secretarial support, business forms, tools, equipment, and similar items to complete this engagement?  
Yes No
11. Will you be responsible for planning the work to be done? Yes No
12. Do you decide the hours of work, the work location, the time frames and the individual tasks to be assigned? Yes No
13. Is it true that Trent will not provide training, supervision, or instruction on how (i.e., methods used) to complete this engagement? Yes No
14. Do you set your own priorities in terms of time, effort, and hours of work? Yes No
15. Is it true that the University will **not** provide any of its employees to assist you in completing this engagement? Yes No
16. Will you be paid based upon the completing the specified task in this engagement (as opposed to hourly, weekly, piece work, commission, etc.)? Yes No
17. Do you have your own insurance coverage (e.g., health, liability)? Yes No  
List insurance type: \_\_\_\_\_
18. Are you employed full time by another university? Yes No  
List: \_\_\_\_\_
19. Describe the services to be provided.
20. Total estimated amount to be paid for services including reimbursable expenses (if applicable).  
\_\_\_\_\_
21. Term of service including specific dates of service (if known).  
\_\_\_\_\_
22. Date(s) reports/deliverables (if any) are due.  
\_\_\_\_\_

**ICON FORM**

**Part II** - To be read and signed by Individual providing the service - Signature

Required.

**Please note: Unincorporated business with no BIN number or HST number and operating under a personal name will be issued a T4A. Therefore, to be paid promptly, please provide a personal SIN number.**

I authorize Trent University to use the personal information I have provided for the purposes of assessing and verifying my legal status as an independent contractor with Trent University. I understand that the information is used for the administrative, employment-related, financial and/or statistical purposes of the University. This information is protected and is being collected pursuant to section 39 (2) and section 42 of the Freedom of Information and Protection of Privacy Act of Ontario (RSO 1990).

By signature below, I warrant and affirm that the information provided herein is true, complete and correct. I agree to personally, indemnify and hold Trent University harmless from any claim, damages or liabilities resulting directly or indirectly from reliance thereon. I understand that I am being engaged as an independent contractor and that I am responsible for any taxes resulting from this engagement. I am willing to provide proof of liability insurance and WSIB coverage or equivalent.

Name (print)

Title

Signature

Date

Return this signed form to the University department that may engage you to perform services. Do not begin work until you have obtained a Purchase Order.

This form combined with the University Purchase Order constitutes the entire agreement between you and Trent University. Failure to follow this instruction may result in nonpayment for services.

**ICON FORM**

**Part III** - To be completed by the Department / Account Holder and forwarded with the Purchase Requisition to Purchasing.

The University employee signing below warrants: that he or she has reviewed the information provided, that the information is true to best of the signer's knowledge, and the independent contractor's representations regarding the services to be performed is correct.

The signer below should be the University Department Head or Account Holder.

Name (print)

Title

Signature

Date