

CANADIAN ASSOCIATION OF POSTDOCTORAL SCHOLARS (CAPS)

PRELIMINARY POSITION PAPER ON POSTDOCTORAL STATUS

INTRODUCTION

The Canadian Association of Postdoctoral Scholars has assembled this position paper to serve as a guide on the issue of postdoctoral status, to accompany the online survey on this topic. The results of this anonymous survey will help guide future advocacy efforts, with the goal of improving the postdoctoral experience in Canada by helping to better define postdoctoral status designations on a national scale. Currently the status designation of postdoctoral fellows (PDFs) varies considerably across the country, with significant differences in the benefits related to these different statuses. Of particular concern is that the majority of PDFs have no clearly defined status and suffer from absent, or inconsistent benefits and unknown rights. For a summary and more details on the currently existing status (and non-status) designations please refer to our website <http://tinyurl.com/postdocstatus>.

In advance of a national meeting on the topic, the Canadian Association of Postdoctoral Scholars (CAPS) national committee wants to better document the precise details of today's situation (i.e., how many PDFs have which status and what they think about their situation). Our objective is an improvement of the national PDF situation, beginning with a unified definition of status for all PDFs in Canada. A unified postdoctoral status definition will not only help PDFs but will also help the universities in which they work, and the provincial and federal agencies that interact with them. It will better serve the postdoctoral community by ensuring that all postdocs have access to the same set of basic benefits, or alternatively that all postdocs will have the opportunity to choose which designation they wish to receive at the start of their appointment. Before we can reach a decision on what position to advocate on this topic, we need to gauge the opinion and needs of our greater membership to determine the amount of support for different scenarios. This data will be used to advocate to the appropriate decision makers responsible for implementing postdoctoral policies, both institutionally and nationally.

This document lays out some advantages and disadvantages of two possible future statuses that we imagine for postdoctoral fellows (PDFs): *employees vs. trainees* or a sequential, performance-oriented combination of both. The accompanying survey provides PDF's the ability to voice their opinion on which of these status designations is more preferable.

The information compiled here is based on the best information and data currently available.

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Please note:

- Employee rights are guaranteed under (a) Federal EI regulations and (b) provincial labour laws. For this document, where provincial laws apply we have referenced Ontario's as it is somewhat standard relative to other provinces and is applicable to the majority of Canadian PDFs. For more information on your provincial labour law, links have been included at the bottom. Of course, employee rights are only applicable where there is a formal employee - employer relationship. In the past the Tax Court of Canada has ruled that PDFs are not employees (see *Bekhor v MNR* ruling: <http://decision.tcc-cci.gc.ca/en/2005/2005tcc443/2005tcc443.html>).
- The **official trainee** status is a relatively new concept and needs to be agreed upon by universities, CRA, and immigration (see comments below). Please note that this official trainee status may differ from today's understanding of a trainee at your university.
- Some advantages and disadvantages are detailed in the **appendix**. Even when advantages and disadvantages do not differ between the two designations we still list them so as to give a better overview of how these might or might not affect PDFs. At the end of each section we summarize the most important points, especially the points that truly differ between the two approaches.
- **Asterisks (*)** indicate benefits that are not guaranteed or might be problematic for international PDFs (see appendix for details).

SUMMARY STATEMENTS

EMPLOYEE STATUS SUMMARY:

The most important advantage of EMPLOYEE status appears to be the classical benefits associated with such a status. EMPLOYEE status will formalize the nature of the relationship between the supervisor and the PDF. The drawback of this solution might lead to lower take-home pay as compared to TRAINEES; as TRAINEES might have tax free status in conjunction with payment of tuition fees.

TRAINEE STATUS SUMMARY:

The most important advantage of TRAINEE status appears to be the potentially higher take-home pay, despite the induction of tuition fees, particularly in the case of tax-free status (which cannot be guaranteed currently). However, there is the loss of classical employee rights, in particular pension or unemployment insurance, which may be important to some PDFs depending on their life situation. The cost benefit calculation of this situation is seriously affected by life situation, and long term prospects, especially in the area of insurance and pension considerations.

The detailed list of advantages and disadvantages for each category follows below:

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EMPLOYEE STATUS

The status of EMPLOYEE is well defined in Canadian society. Here we list only the advantages and disadvantages that will affect a postdoctoral fellow (PDF) with this status. Due to the nature of these appointments, PDFs would likely be classified as 'non-permanent' or contract EMPLOYEES instead of permanent staff. Thus PDFs will be protected by regular employment law with a minimum level of benefits (such as employment insurance, Canada Pension Plan, vacation standards, and the university's basic level of medical and dental benefits) but may not have access to extended employee benefits (such as the university's pension plan, long-term disability, and life insurance). Directly below we focus on advantages and disadvantages that are important in this context, while a complete list is given in the appendix.

ADVANTAGES

- Access to **Federal EI benefits** and **provincial employment standards** for PDFs:
 - Employment insurance (<http://www.hrsdc.gc.ca/en/employment/ei/index.shtml>). (*)
 - Pension / RRSP Contributions (Currently if the income is reported as a fellowship (as opposed to employment income), the recipient cannot make RRSP contributions.) (*)
 - Other benefits and Leaves of Absence (Maternity, Parental, Personal Sickness and Compassionate Care Benefits), note: Where benefit plans exist, the University must pay into them while PDF is on such a Leave of Absence.
 - Covered by compensation insurance (normally Workers Compensation or equivalent) for on-the-job accidents, right to refuse unsafe work, and coverage for on-the-job injuries.
- Access to the University's employee benefits plans.
- **No additional university fees** (tuition or administrative), assuming that you aren't taking any courses independent from your postdoctoral employment.
- The possibility of **collective bargaining rights** associated with union membership, possibly in connection with the faculty association. (See appendix for associated details).
- Free access to **training and other educational activities**. Most employees are paid to upgrade their training with the understanding that this helps them do better work.
- Full integration into the universities' **HR employee databases**, allowing better tracking of this largely invisible population.

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DISADVANTAGES

- Subject to **income tax, EI, and CPP**. Many PDFs already pay provincial and federal income tax and all PDFs may eventually have to pending the CRA decision described below. Some PDFs pay EI and CPP.
- The potential for **fewer post-doctoral positions** and / or **lower salaries** due to the **additional costs** for the EI/ CPP and benefits, that would have to be covered by the supervisor's research grants or university department funds. The extent of this would depend on the number of PDFs at universities. PDFs in general constitute a small portion of total employees, but most supervisors would consider this a material change to the cost of research. On the other hand, if everyone has to pay, it is not a competitive factor.
- Some University's have mandatory benefit plans (e.g. pension plans) further reducing income for those not interested in long term employment with that particular university.
- The possibility of **union dues** associated with union membership (see appendix for associated details).
- **Potential incompatibility with funding agency guidelines for those PDFs receiving fellowships**. Many postdoctoral funding agencies in Canada (and international fellowship agencies) fund postdoctoral fellows directly, and have explicit language in their application and eligibility language indicating that those fellowships are directed towards trainees, not employees, and that postdocs are not employees of the funding agency. Funding is also designated specifically for postdoctoral stipends, and not for any associated fees going into community pools, such as insurance. This could mean that postdocs on fellowships would be ineligible for employee status, postdocs with employee designation may be ineligible for certain fellowships, or that some institutional arrangement would need to be made to accommodate postdocs in this situation.
- **International PDFs** do not benefit from all **Employee benefits**. (*)
- The majority of **international PDFs** are currently here on **work permits**. For "Postdoctoral Fellowships" no LMO is needed. (Labour Market Opinion: An employer has to apply for a Labour Market Opinion before a foreign worker can be hired. A positive Labour Market Opinion will show that there is a need for the foreign worker to fill the job offered and that there is no Canadian worker available to do the job.) With real employee status that might change or at least would have to be considered carefully with "Canada Immigration". (*)

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TRAINEE STATUS

This section refers to the formal adoption of a new status for PDFs, separate from EMPLOYEE status, and with a distinct set of advantages and definitions. The term TRAINEE here does not refer to the various trainee classifications which currently exist (including 'student' in Québec and 'no defined status' or 'trainee' as such). However, for some universities the current 'trainee' status may be very close to the formal status outlined in this document. For information about the currently existing statutes please refer to our website at <http://tinyurl.com/postdocstatus>.

We list here the potential advantages and disadvantages of such a status, many of which will have to be clearly defined in the near future with the universities, CRA, and Immigration. It might be that such a 'TRAINEE' will still be considered a '*student*' for tax purposes but a '*worker*' for immigration purposes. We use TRAINEE to designate PDFs without employee benefits, but with a well-defined status providing certain other benefits. As this status has yet to be clearly defined, we cannot outline all advantages and disadvantages with certainty and some points will likely have to be negotiated. In the following advantages and disadvantages, we list points which seem relatively certain, in 'Other' we list issues which will depend highly on the negotiations in the near future.

ADVANTAGES

- Enrolment in a registered postdoctoral **university database**, allowing better tracking of PDFs.
- Access to **university services** reserved for students, such as family/employment counselling or language training, library access, bus pass, sports facilities.
- Access to a **Postdoctoral Academic Training Program** designed to enhance skill and competency development (see appendix for example programs). This might be a requirement for TRAINEE status and would provide opportunities for training in areas that are relevant for career development (i.e. grant writing courses, interviewing skills, and alternative careers training).
- Potential for **group health benefit packages** in conjunction with or separate from graduate student health benefits.
- **Minimal overhead costs** associated with hiring of PDFs by faculty, potentially resulting in greater take-home pay.
- Depending on policy interpretation by CRA, potential tax free status given the current legislation and regulation (see also Other and Appendix).

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DISADVANTAGES

- **No rights as employees**, no access to EI, and no provincial employment standards, including no possibility of CPP in this period, no possibility of contributing to RRSP, and your income does not count towards increasing RRSP 'allowable limit'. However, if you have received other employment income prior to or during your PDF period, you can still contribute and claim RRSP contributions you make on that employment income.
- **Limited ability** to get **collective bargaining** rights via a union. Non-union Postdoctoral Associations may be able to influence institutional postdoctoral policies instead.
- The potential for significant **tuition, administrative, health plan, and incidental fees**, for example (<http://torontopostdoc.googlepages.com/PDFAppointments2008.pdf>).
- **Possible obligation to take courses** associated with the Postdoctoral Professional Academic Training Program. Due to the diverse nature of PDF career stages this will vary from campus to campus, and discipline to discipline, and could also vary during the period of the PDF.

OTHER

- Depending on the decision of the CRA and Ministry of Finance (there should be a ruling on PDF and taxes in 2009) issuance of a T2202(A) slip and **tax exemption** of all 'T4A code 5' fellowship/scholarship income subject to income tax. This would indicate that your complete fellowship/scholarship income would be exempt from taxes, as is currently the case for graduate stipends. Because of the low (or zero) taxable income, PDFs would also more likely be eligible for GST credit, and similar benefits.
- An important point to negotiate with the universities is the **medical/dental insurance** issue. Currently at some universities international PDFs are not allowed access to university plans (neither the one for grad students, nor the one for staff/faculty), at others they have to pay into the university plan which is typically inferior to the provincial health plan (e.g., Toronto). The potential for improvements to the situation of no benefits does exist, but may come with associated supplementary costs.
- The PDF training may be negatively perceived as an indefinite **training period**, since the classification of PDFs as anything other than employees further delays the transition into a legitimate working environment. On the other hand, it has been shown in the USA that having access to enhanced teaching courses and workshops actually can make trainee PDFs highly competitive when moving into faculty positions.

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APPENDIX

EMPLOYEE

- Details for some of the benefits listed above and other less important benefits:
 - **Maternity Benefits:** Federal: 55% of average wages to a yearly maximum of \$41,500 for up to 15 weeks of job protected leave
<http://www1.servicecanada.gc.ca/eng/ei/types/special.shtml#Maternity3>
 - **Parental Benefits:** Federal: 55% of average wages to a yearly maximum of \$41,500 for up to 35 weeks of job protected leave:
<http://www1.servicecanada.gc.ca/eng/ei/types/special.shtml#Parental3>
 - **Personal Sickness Benefits:** Federal: 55% of average wages to a yearly maximum of \$41,500 for up to 15 weeks of job protected leave:
<http://www1.servicecanada.gc.ca/eng/ei/types/special.shtml#Sickness3>
 - **Compassionate Care Benefits:** Federal: up to 6 weeks job protected leave to care for a sick or dying family member, <http://www1.servicecanada.gc.ca/eng/ei/types/special.shtml#much>
 - **Vacation Days** (Ontario: minimum 2 weeks per year above and beyond statutory holidays, http://www.labour.gov.on.ca/english/es/guide/guide_7.html)
 - **Public Holidays** (Ontario: in addition to vacation days, mandatory paid days off or additional pay during 9 public holidays,
http://www.labour.gov.on.ca/english/es/guide/guide_8.html)
 - **Vacation Pay** (Ontario: would amount to an immediate 4% wage increase,
http://www.labour.gov.on.ca/english/es/guide/guide_7.html)
- **Postdoctoral Unions.** Joining a union would allow collective bargaining for contracts including wage, supplementary health coverage, access to university services and access to courses (as is the case for many faculty members and their families).
http://www.cupe3906.org/index.php?option=com_content&task=blogcategory&id=40&Itemid=270,
http://communications.uwo.ca/com/western_news/stories/national_union_to_represent_western_postdoctoral_associates_20081003442871/
- **Minimum wage** (Ontario: http://www.labour.gov.on.ca/english/es/guide/guide_4.html, note that PDFs would not be paid an hourly rate but on salary and it is not certain if we would be eligible. There is a minimum wage for employees working on salary, but no details are given on the website.) Note also that this minimum pay is in the range of \$20,000 what today's PDFs earn anyway.
- **Working time:** PDFs would likely be paid on salary and not on hourly basis. Working time would thus still depend on an agreement between the PDF and their supervisor.

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- **Additional benefits**
As employees, contributions to the Canadian Pension Plan (CPP) are counted toward eventual pensions. Also, many employees can opt to shelter some portion of their income in RRSPs (*) or accumulate the option to contribute in future on the basis of the earnings in the current period.
- **Potential incompatibility with funding agency guidelines for those PDFs receiving fellowships.** Many postdoctoral funding agencies in Canada (and international fellowship agencies) fund postdoctoral fellows directly, and have explicit language in their application and eligibility language indicating that postdocs are not employees of the funding agency. Funding is also designated specifically for postdoctoral stipends, and not for any associated fees going into community pools, such as insurance. These institutional policies would need to change, or **Streamlining grant payouts may be required** in order for PDFs to be considered university employees. By our estimate between 10-20% of PDFs are being paid in part or in full by an external grant (NSCERC, SSHRC, CIHR for example). For some of the PDFs who receive such a grant directly and are not “topped up” by their university, there is no financial link between the PDF and their university. In this case, even if the PDF was considered an employee, they may not be considered a university employee (instead they would be an “independent contractor”), causing them to be ineligible for benefits which are initiated by an employer.

TRAINEE

- **PDF income could stay/become tax-free:**
Many hold out hope that PDFs could be issued T2202(A)s, which in combination with a “T4A code 5” would result in PDF income not being taxed. (See page 30 in the following pdf-document for various T4A codes which are not eligible http://www.investcomoxvalley.com/businessresources/documents/Deducting_Income_Tax.pdf).
Currently the Canadian Revenue Agency (CRA) has ordered some Universities not to issue T2202(A)s: the Québec universities have been asked to stop to issuing the forms, other universities (e.g., Toronto) were prevented from starting to issue them until the CRA has reached a ruling, while other universities (e.g., Ottawa or Dalhousie) continue to issue without notification from the CRA but also without certitude that they will be accepted. The CRA and Ministry of Finance are completing currently a review of the situation to come to a final and coherent decision on the matter. If they agree that PDFs should be *considered students for tax purpose*, then income could be non-taxable with the above combination of tax documentation. (In the current ruling only persons who fit their definitions of a *student* can receive a T2202(A) form) In support of this position, CIHR’s president has mentioned that the CIHR postdoctoral salary is calculated based on the assumption that postdocs are students and should take home their stipend tax-free, otherwise postdoctoral salary levels would make no sense in comparison with the tax-free income of graduate students.

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Note: even though some universities, such as McGill, appear to be issuing T2202(A)s these will only be recognized by the CRA if their review deems that PDFs are *students for the purposes of taxation*.

- **Postdoctoral Academic Training Program information.** Information on some current training programs in existence for postdoctoral fellows are listed on the following pages: <http://www.etudesup.uottawa.ca/Default.aspx?tabid=2434> and http://www.dalgrad.dal.ca/postdoctoral/PDF_POLICY-APPROVED_072008.pdf and <http://www.sgs.utoronto.ca/informationfor/postdoctoral/resources.htm#training>
- **Fees may continue to grow**
Many universities have moved the administration of the PDFs into their School of Graduate Studies Faculties. The additional costs incurred by the academic programs provided to postdoctoral fellows have resulted in the institution of new fees being charged to PDFs to cover these costs (see the above links for examples). Postdoctoral training may result in additional fees depending on the degree of cost associated with training, potentially mimicking the situation with graduate fees (see <http://www.cfs-fcee.ca/html/english/research/factsheets/factsheet-tuitionfees-8x11.pdf> and <http://www.cfs-fcee.ca/html/english/research/factsheets/Factsheet-2004-Post%20Res.pdf> for examples / [discussion](#)). However CAPS maintains the position that due to our unique position at universities (contribution to research mission and publication record of the universities, direct supervision and education of undergraduate and graduate students, external grant acquisition) PDFs deserve special treatment with regard to any associated fees.

INTERNATIONAL PDFs

- International PDFs working on a work permit cannot benefit from **unemployment payments** if they lose their position or do not find another position directly after the end of their contract as they are not “available to work in Canada”. This is valid even if they have paid contributions and worked for the usually necessary time. Only an “open working” permit or “permanent residence” allows these benefits (eg. <http://www.ei-ae.gc.ca/policy/appeals/cubs/60000-70000/69000-69999/69684E.html>).
- Depending on the country of origin, **pension contributions** are paid out during the retirement. For example the countries of the European Union have such an agreement with Canada. RRSP contributions are only valuable if the PDF plans to spend his retirement in Canada. Contributions can be taken out early but may be penalized as well as taxed.
- Currently most PDFs are here on **work permits** which do not require a LMO. In the case of an employee status, this has to be reviewed with ‘Canada Immigration’. However, guest professors or visiting researches do not require a LMO either, thus this point should not be a serious problem.

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Additionally, a normal work permit cannot be extended for more than 3 years, those for PDFs can currently.

There might also be the case that PDFs would need as a trainee a 'study permit', which should not be a serious obstacle either.

- International PDFs have access to the **same benefits as Canadian citizens** and permanent residence: layoff, sickness, maternity, parental and family medical leave under EI (http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/ei_tfw/ceie_tfw.shtml).
- They also have access to **public health insurance** as workers on working permits (Ontario: <http://www.health.gov.on.ca/english/public/pub/ohip/eligibility.html> — point #3).

OTHER COMMENTS

- Besides a strict all-employee or all-trainee decision, a compromise proposition could be to offer both statuses within one university and allowing the PDFs to choose within certain limits (for example: trainee status being limited to a set number of years after the PhD, and only for those enrolling in an academic PDF program. See reference below).

REFERENCES:

Link to different provincial **Employment Standards**:

- BC: <http://www.labour.gov.bc.ca/>
- Manitoba: <http://www.gov.mb.ca/labour/standards/>
- New Brunswick: <http://www.gnb.ca/0308/index-e.asp>
- Newfoundland & Labrador: <http://www.hrle.gov.nl.ca/lra/labourstandards/default.htm>
- Nova Scotia: <http://www.gov.ns.ca/lwd/employmentrights/>
- Ontario: http://www.labour.gov.on.ca/english/es/es_pubs.html
- PEI: <http://www.gov.pe.ca/cca/index.php3?number=1004723>
- Québec: <http://www.cnt.gouv.qc.ca/en/>
- Saskatchewan: <http://www.labour.gov.sk.ca/LS/>
- Canada Employment Insurance:
 - <http://www.hrsdc.gc.ca/en/employment/ei/index.shtml>
 - <http://www1.servicecanada.gc.ca/eng/ei/menu/eihome.shtml>
- Bekhor v MNR Ruling in Tax Court of Canada: ruling regarding employment status of PDF: <http://decision.tcc-cci.gc.ca/en/2005/2005tcc443/2005tcc443.html>
- Some universities as for example the University of Ottawa and Dalhousie University use currently two different PDF distinctions: **PDF/PDA**
 - <http://www.grad.uottawa.ca/Default.aspx?tabid=1415>
 - http://www.dalgrad.dal.ca/postdoctoral/PDF_POLICY-APPROVED_072008.pdf
- Full summary of current postdoc statuses <http://tinyurl.com/postdocstatus>