



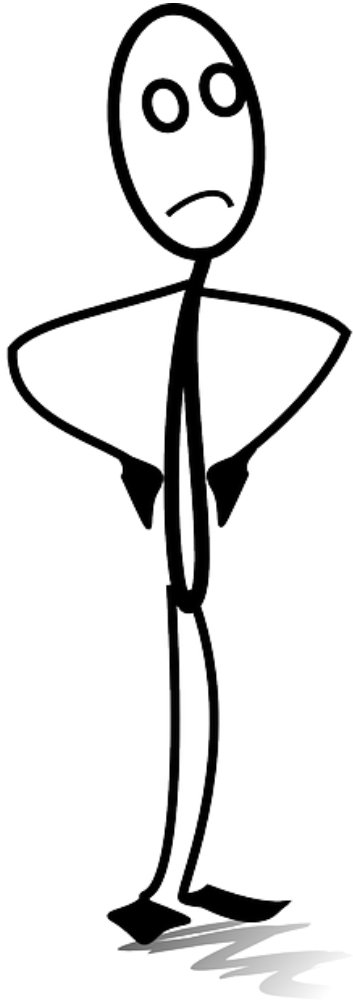
Canada Revenue
Agency

Agence du revenu
du Canada

CPP/EI Rulings Program Canada Revenue Agency

Post-doctoral fellowships
January 30, 2019

Outline



- CPP/EI Rulings Program
- What is a CPP/EI ruling
- Determining the employment status of post-doctoral fellows – employee or not
- Jurisprudence
- Indicators that a post-doctoral fellow is an employee
- Indicators that a post-doctoral fellow is not an employee
- CPP contributions and EI premiums
- International post-doctoral fellows

Purpose



The purpose of this session is to provide information on what the CPP/EI Rulings program at Canada Revenue Agency (CRA) looks at when deciding whether a post-doctoral fellow is an employee or not.

CPP/EI Rulings Program

- The CPP/EI Rulings Program is responsible for determining the employment status of a worker and whether the employment is pensionable or insurable
- There are generally two categories of workers:
 - Employees – hired under a contract of service
 - Self-employed – hired under a contract for services
- A worker's employment status directly affects their entitlement to employment insurance benefits and it can also have an impact on how they are treated under other legislation such as the Canada Pension Plan and the Income Tax Act



Examining the Total Relationship Employee vs. Self-employed

- The level of control the payer has over the worker
- Whether or not the worker provides the tools and equipment.
- Whether the worker can subcontract the work or hire assistants
- The degree of financial risk taken by the worker
- The degree of responsibility for investment and management held by the worker
- The worker's opportunity for profit
- Other relevant factors

What is a CPP/EI ruling



- A CPP/EI ruling is an official decision that an authorized officer of the CRA makes
- CPP/EI rulings are determined and issued in accordance with the Canada Pension Plan (CPP) and the Employment Insurance Act (EIA)
- If a worker or payer does not agree with the CPP/EI ruling, they can appeal the decision

Post-doctoral fellow

It is an individual who has recently obtained his or her Ph.D. (usually within the past five years or possibly longer) who is engaged in advanced research activities at a university or at a facility or laboratory connected with a university. The aim of the individual is often to obtain sufficient experience and published research as a post-doctoral fellow to be considered for a position as a professor at a university.

(Income Tax Folio S1-F2-C3: Scholarships, Research Grants and Other Education Assistance)

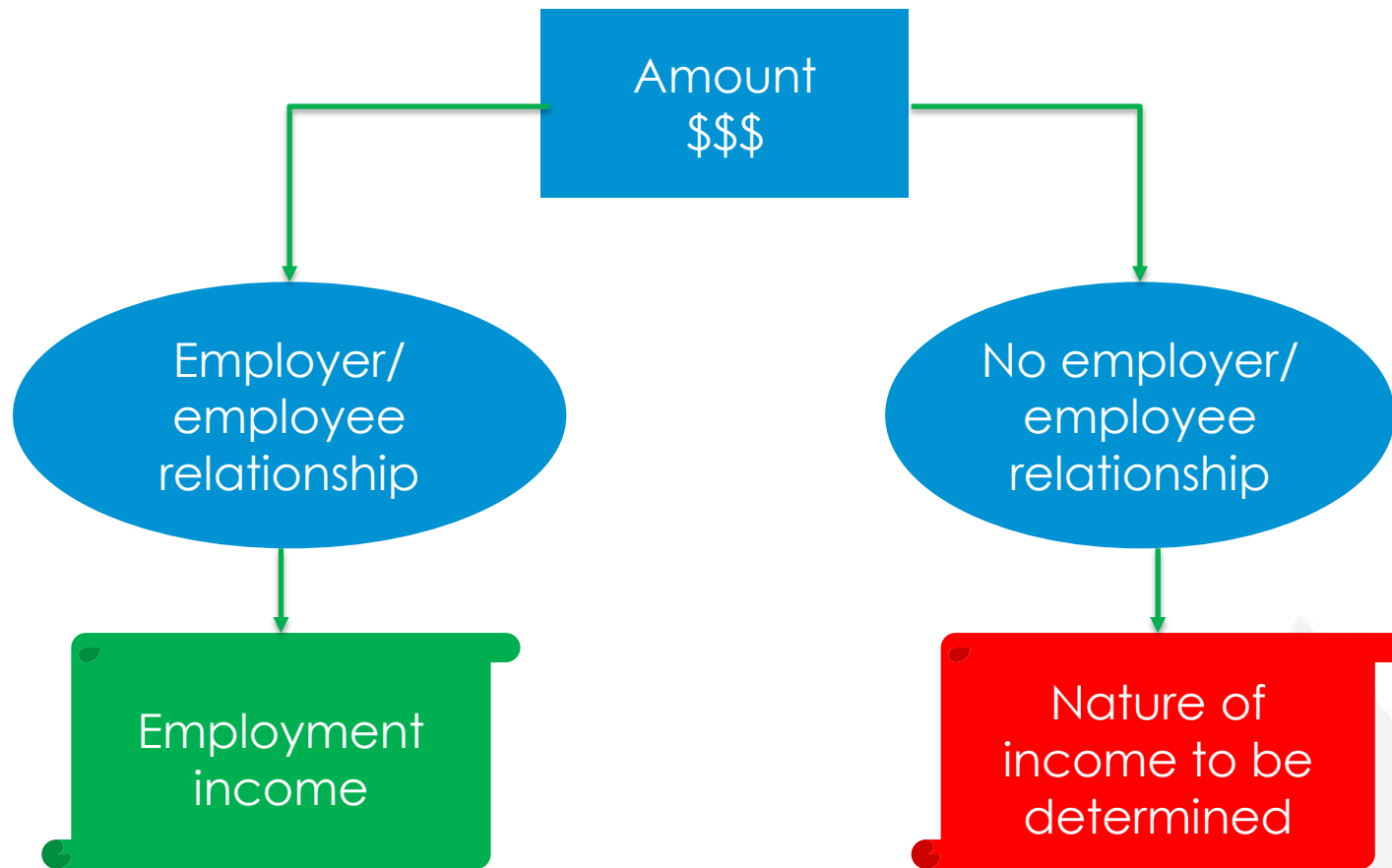


Key Question: Is the amount received employment income or not?



- If an employer-employee relationship exists between the post-doctoral fellow and the payer, the amount received is treated as employment income
- If no employer-employee relationship exists, the nature of the amount will need to be determined for income tax purposes

Post-doctoral fellow's income



Jurisprudence

- The Courts have rendered a number of decisions involving post-doctoral fellows
- The CRA follows the Court's approach in these cases when making a CPP/EI Ruling:
 - *Bekhor v. Canada* 2005 TCC 443
 - *Naghash v. Canada* 2005 TCC 694
 - *Chabaud v. The Queen* 2011 TCC 438
 - *Caropreso v. The Queen* 2012 TCC 212
 - *Rizak v. Canada* 2013 TCC 273



Bekhor v. Canada (July 2005)

- This decision basically laid out the approach to follow in fellowship cases
- At paragraph 26 of the decision, the judge indicated the following (emphasis added):

The question at issue is not whether the agreement between the parties is a contract of employment or a contract for services (employee versus independent contractor status), **but whether it is a contract of employment or an agreement of financial assistance regarding continuing studies (employee versus student or postgraduate student status).**

- In this case, the judge determined that the post-doctoral fellow was not an employee and the amount paid was not employment income

Naghash v. Canada (Nov. 2005)



- The TCC applied the same test
- The judge arrived to the same conclusion as in *Bekhor*
- The amount paid to the post-doctoral fellow was not employment income

Chabaud v. The Queen (May 2011)

- The court followed the approach taken in *Bekhor and Naghash*
- In this case the judge rendered a decision where the post-doctoral fellow was considered to be an employee (paragraph 89):

In the case at bar, Mr. Chabaud received remuneration for the services he rendered and the amounts he received were not assistance or a subsidy to enable him to acquire new knowledge, nor were they recognition of the excellence of his academic results.



Caropreso v. The Queen (Nov. 2012)

- In *Caropreso*, the judge uses the same approach as *Bekhor*. Paragraph 20 of the decision indicated (emphasis added):

The root of the difficulty is that payments to post-doctoral research fellows often have dual elements. The payments further the education of research fellows and they also provide compensation for work performed. If the payments are received by virtue of employment, this takes precedence. **However, in making this determination, it is relevant to consider the dominant characteristic of the payments, whether it is compensation for work or student assistance.**

- The judge concluded that she was an employee (paragraph 21):

In this case, I would conclude that the primary aspect is compensation for work performed. Although the relationship with OHRI had an element of furthering Dr. Caropreso's education, I find that this element was subsidiary.

Rizak v. Canada (Sept. 2013)

- In *Rizak*, the judge again confirmed the approach. Paragraph 26 of the decision indicated:

I agree with Justice Woods' conclusions. In my view, the test that she uses is equally applicable to doctoral students and I adopt it for the purposes of this Appeal.



- Mr. Rizak was a doctoral student working as a graduate research assistant at the University of British Columbia and the court determined that he was an employee

Summary of jurisprudence

- While the nature of the income varied in the preceding cases, the approach taken was consistent
- A key element in these cases is control
- In cases where the fellows were determined to be employees, they may have had some freedom but the payer had control over the type of research done and how it was done



Employment status for post-doctoral fellows – employee or not?

- The CRA looks at the relationship between the post-doctoral fellow and the payer
- Generally, an employee is hired to carry out specific duties under the direction and control of the party that hires them



Indicators that a post-doctoral fellow is an employee

The payer

- approves and monitors the work schedule and leave
- assigns specific tasks
- decides what research or other tasks the post-doctoral fellow will do
- determines the work schedule
- can fire or terminate the post-doctoral fellow's participation in the project if there is a difference of opinion and the worker does not conform to the payer's direction
- provides the lab or research facility
- decides the remuneration
- provides and pays for benefits
- receives a significant part of the economic value of the invention
- pays the fees to publish an article in an academic journal

It is important to note that the above indicators are met if the payer has the right to determine the above even if they do not exercise this right.

Indicators that a post-doctoral fellow is an employee

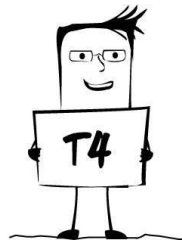
The post-doctoral fellow



- has independence but the payer has the final word on how research is done
- has to join a lab's team of researchers and respect certain rules
- participates in the payer's pension plan
- receives paid leave
- completes the same or similar tasks as the payer's employees
- produces original data that are the property of the payer
- is put on the call schedule to provide after-hours service
- pays lower tuition fees
- may quit the job without obligation

If an employer-employee relationship exists

- The employment will be pensionable under paragraph 6(1)(a) of the Canada Pension Plan and the income will be subject to CPP contributions
- The employment will be insurable under paragraph 5(1)(a) of the Employment Insurance Act and the income will be subject to EI premiums
- The income is taxable as employment income under section 5 of the ITA
- The income, and the contributions to the CPP and the EI will be reported on a T4 slip



CPP Contributions and EI Premiums

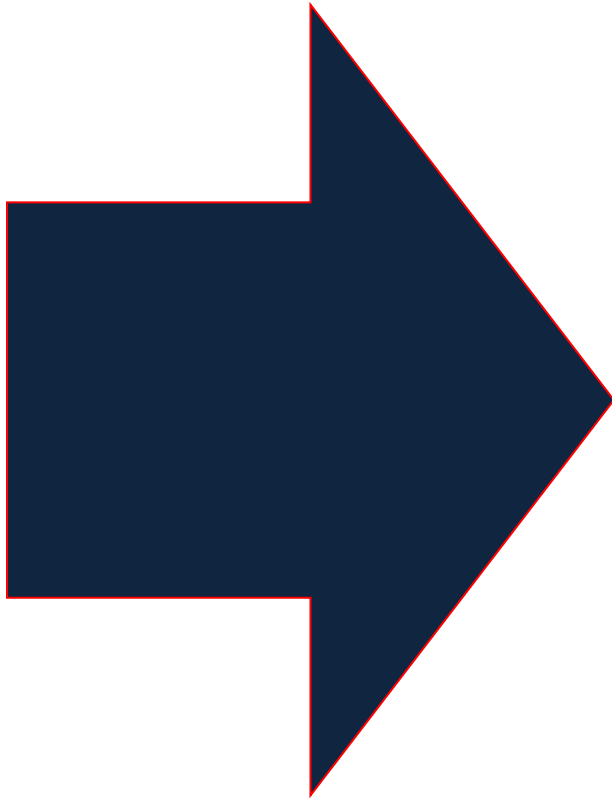
CPP contribution rates, maximums and exemptions

Year	Maximum annual pensionable earnings	Basic exemption amount	Maximum contributory earnings	Employee and employer contribution rate (%)	Maximum annual employee and employer contribution
2019	\$57,400	\$3,500	\$53,900	5.10	\$2,748.90

Federal EI premium rates and maximums

Year	Maximum annual insurable earnings	Rate (%)	Maximum annual employee premium	Maximum annual employer premium
2019	\$53,100	1.62	\$860.22	\$1,204.31

Indicators that a post-doctoral fellow is not an employee



- The payer does not approve or have the right to approve leave
- The payer does not provide paid leave
- The payer does not decide or have the right to decide the work schedule
- The payer has no control or right to control how the research is conducted
- The post-doctoral fellow plans and develops the project
- The post-doctoral fellow sets self-imposed milestones
- The post-doctoral fellow receives minimal pay

If an employer-employee relationship does not exist



- If it is determined that the post-doctoral fellow is not an employee, the income is not employment income
- The employment will not be pensionable and the income will not be subject to CPP contributions
- The employment will not be insurable and the income will not be subject to EI premiums

International fellows

- Workers must have a legitimate right to seek employment in Canada
- Providing the foreign national is authorized to work in Canada and has entered into a contract of service with an employer, their employment would generally be included in pensionable and insurable employment
- When a worker is sent from another country to work in Canada, they may be subject to Social security laws of both countries. The CPP and EIA have provisions to prevent the duplication of coverage for the same work when certain conditions are met



For more information:



CPP/EI explained on CRA's website:
[Post-doctoral fellows](#)

How CRA determines the employment
status:
[RC4110, Employee or Self-employed?](#)

Questions



- Given previous rulings by the CRA, is it fair to say that ALL internally-funded postdocs (i.e., those paid from supervisor's grants or institutional funds rather than external awards/fellowships/scholarships) should, by default, be considered employees and granted access to EI and CPP by the institutions where they work at this point?
- Is there any weighting given to the various criteria used to determine whether an individual is employed vs self-employed?

Questions



- If a postdoc is not deemed an employee, as is typically the case for externally-funded postdocs (i.e., those paid by awards/fellowships/scholarships from funding agencies rather than their institution), does that automatically result in them being considered self-employed?
- Are there any previous rulings where postdocs paid by a funding agency (i.e., externally-funded postdocs) have been ruled employees by the CRA? If so, what factors led to that decision?
- Is there a mechanism by which a member of the general public can access previous EI/CPP Rulings related to specific types of cases (e.g., postdoc rulings)?

Questions or comments

