

Social Security for Sole Proprietors

During 2014, a number of contractors who were providing their services as Sole Proprietorship, working for a client through a placement agency applied to Service Canada for Employment Insurance benefits upon completion of their assignment.

A number of applications were denied. Throughout 2014 and into mid 2015, the APCC worked with one of the consultants on a series of appeals. Regrettably each appeal was denied, by either the CRA or Service Canada, with each offering a number of reasons for the denials as the matter progressed.

Finally the case was appealed to the Tax Court. However, the matter never made it to court, because the CRA settled the evening before the hearing, confirming that the worker was involved in insurable employment.

The entire process left a lingering perception that the denials throughout the appeal process were offered with the hope that the contractor would go away. Fortunately, he did not and justice was served.

The APCC's message to you is that the CRA could treat you in very much the same way. In recognition of this risk we suggest that when your contract ends, you apply for EI benefits in order to test the waters, and see how they might respond to such an application by you.

The Right for Social Security

The right for Social Security, which includes Social Insurance and Pension benefits, is one of the fundamental Human Rights. Every Canadian citizen or permanent resident, providing their services as an individual (Sole Proprietor) has the right to participate in Canada's social programs. This right is protected by Canadian legislation¹, Canada's Constitution², and was affirmed in 1976, when Canada ratified International Covenant on Economic, Social and Cultural Rights³.

Canada Revenue Agency considers an individual who is working through a Placement Agency for a client to be insurable and pensionable.

RE: Employment Insurance Regulations

According to the Paragraph 6(g) of Employment Insurance Regulations, every person (Sole Proprietor) is involved into insurable employment as long as all of the following requirements are met:

- The worker is placed in that employment by the agency;
- Worker is performing services for and under the direction and control of the client;
- The worker is remunerated by the agency for the performance of those services.

RE: Canada Pension Plan

Employment will be considered pensionable if further conditions of the Subsection 34(1) and 34(2) of Canada Pension Plan Regulation are met:

- the worker is performing services for the client of the agency;

¹ Subsections 34(1) and 34(2) Canada Pension Plan Regulations and Paragraph 6(g) Employment Insurance Regulations

² Paragraph 7 of Constitutional Act, 1982 (80) and Paragraph 132 of Constitutional Act 1867

³ Article 9 of the International Covenant on Economic, Social and Cultural Rights

- the terms and conditions under which the services are performed are similar to a contract of service i.e., an employer-employee relationship;
- the worker is paid by either the agency or by the client of the agency.

Court Cases

Canadian Courts recognize the right of Canadian citizen to participate in Canada`s social programs. This right is supported by several court cases:

- Carver Pa Corporation v. MNR⁴
“It is trite law that the term “employment” in Regulation 6(g) under the Act includes business, trade or occupation and doesn’t solely designate a master and servant relationship. It doesn’t matter whether the worker involved is an employee or an independent contractor. Both are included in insurable employment.”
- Registry of Graduate Nurses v. MNR⁵
“So far as the agreement between the parties is concerned characterizing Mr. Liverance as an independent contractor, the law is fairly clear that that sort of an agreement is not determinative of the issue.”
- Sheridan v. MNR⁶
“Whether they be self-employed or employed under a contract of service, taxi drivers and bus drivers for instance are exposed to the risk of being deprived of work. This risk is, in my opinion, an insurable one”

Your Steps

If a worker or payer is not sure of the worker's employment status, either party can request a ruling by the CRA to have their status determined. More information on the ruling process is available in [How to obtain a ruling for Canada Pension Plan and Employment Insurance purposes.](#)

Like in any other employment, being a contractor also bares a risk of finding yourself unemployed. We would suggest that participation in EI should mean this risk is an insurable one.

If you are a Sole Proprietor and your working relationship has met all of the requirements of the legislation listed above, and you also haven’t received a response to a CPT1a ruling request that states that you are not insurable, and more than 5 days have passed since your current contract ended, it is your right to apply for Employment Insurance benefits through Service Canada [online application.](#)

In case of denial of your benefits, we encourage you to appeal this decision to which ever department communicates with you on your application (i.e. Service Canada or CRA). More information can be found

⁴ Carver Pa Corporation v. MNR

⁵ Registry of Graduate Nurses v. MNR

⁶ Court Case is available for reference in a legal database

at Canada Revenue Agency CPP/EI Appeal information and Service Canada Appeal Information.

The May 2015 case demonstrated to the APCC that the CRA and Service Canada are prepared to offer a number of reasons to deny EI Benefits when application is made by Sole Proprietor.

This is the fact, even though:

1. CRA requires Placement Agencies to deduct CPP contributions and EI premiums according to their own guide “Payroll Deductions and Remittances”⁷;
2. The CRA receives your T4s each year with a code 11 in box 29, with reported income earned in section titled “Other Information” with code 81 and contributed premiums, as per CRA’s guide “Filing the T4 Slip and Summary”⁸;
3. The ROE (Record of Employment) issued by your Placement Agency clearly reports insurable earnings and Insurable hours worked.

The suggestion being made is that you should apply to Service Canada for your benefits if you are out of work for more than 5 days, even if you have a new contract opportunity pending, just so that you can see if they are prepared to accept or deny your claim.

If you have another engagement and they accept your claim, you can always withdraw.

However if they reject, then you can pursue the matter and try to determine their reasons. Hot-links to the websites with the Information on the process of appealing denials are listed above. This process requires some administrative effort. However, the APCC is here to help you.

⁷ <http://www.cra-arc.gc.ca/E/pub/tg/t4001/README.html>

⁸ <http://www.cra-arc.gc.ca/E/pub/tg/rc4120/README.html>