



# The HST Blog

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## Am I An Independent Contractor or An Employee?



Whether an individual is an independent contractor or an employee for GST/HST purposes is an important question. If an individual is an employee, then the employer does not have to pay GST/HST in respect of the individual's salary and the individual does not have to charge, collect and remit GST/HST on the amount paid as salary. However, if the individual is in independent contractor and earns more than \$30,000 per year, the person is required to register for GST/HST purposes and charge, collect and remit GST/HST. Often, the individual gets paid a tax included amount and, therefore, pays the GST/HST from the amount received.

The issue arises more and more often. There are few GST/HST decisions on the issue on employee vs independent contractor. We often look at CPP and EI cases for the views of the Tax Court of Canada.

In a recent decision on October 21, 2015, in [Quinte Children's Homes Inc. v. The Minister of National Revenue](#), Justice Graham issued a decision that clearly sets out the test used to determine whether an individual is an independent contractor or an employee:

1. The first issue is whether the intention stated in the contract was that of an independent contractor or an employee?
2. The second issue is whether, when examine through the prism of that shared intention, their objective relationship was that of an employee/employer or independent contractor?
3. In examining the relationship prism, whether the Wiebe Door factors apply?
  - Whether the "employer" exercised control over the "employee"?
  - Whether the "employer" provided the tools necessary for the "employee" to perform work?
  - Whether the "independent contractor" had an opportunity for profit - or could negotiate the amount of consideration paid for services performed?
  - Whether the "independent contractor" had a risk of loss?

In the end, Justice Graham found that Ms. Fobear (who was an intervenor in the case) was an independent contractor. In the analysis, Justice Graham answered some questions finding Ms. Fobear was an employee and other questions finding Ms. Fobear was an independent contractor. These cases are rarely simple. What tipped the scales in this case was a lack of control exercised by Quinte Children's Homes Inc. over the day-to-day activities of Ms. Fobear.

**Comments (0)** Read through and enter the discussion with the form at the end

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