



**Western Talent & Innovation Review**

## **Contractors, Employers and Innovation at PCSI**

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### **Abstract**

*There are hundreds of thousands of people working in Canada today as independent contractors. Many companies operating in Canada rely heavily on contractors as part of their workforce. While being self-employed comes with many benefits, it also carries many risks. Recent legislation in Alberta and Ontario has increased the scrutiny placed on employers and their contractors. As government regulation increases, it can become more difficult for independent contractors and employers of independent contractors to maintain their relationships. One Calgary company is addressing this issue and offering contractors and employers a simple solution to what can often be a tricky balance of legal compliance, business flexibility, and worker needs. This article discusses the state of contractors in Canada and what Professional Contractor Solutions Incorporated (PCSI) is doing to protect the contractor model in Canada.*

Contracting has long been a preferred form of employment for Canadians, however contractor-employer relationships can be difficult to manage; especially in the case of long-term employment where a contractor becomes dependent upon work from one employer. Professional Contractor Solutions Incorporated (PCSI) in Calgary, Alberta is making the complex world of contracting easier to navigate for both contractors and those who employ their services. Aly Bandali is the CEO and Founder of PCSI. I spoke with Bandali and his VP of Operations Tracy Clark to discuss what PCSI is doing to protect the

contractor model in Canada. This article provides an in-depth look into what this Western Canadian company is doing to provide an innovative solution to issues surrounding contractors and employers.

Contractors are those self-employed individuals who enjoy a sort of freedom that employees find difficult to attain. The esteemed British business guru Charles Handy described contractors as “portfolio people;” those who perhaps would not be able to describe all of what they do in a single sentence, but rather have developed a working portfolio. Portfolio people can also be those who, unlike most of us, are simply not content to work more than forty hours a week for someone else. Contracting then is a valuable alternative to traditional forms of employment and can sometimes even be a way for individuals to turn their hobbies into businesses.<sup>1</sup>

The Canada Revenue Agency (CRA) determines if a person is an employee or self-employed based on whether or not that person entered into a contract of service with an employer (where an employee-employer relationship exists) or a contract for services, whereby an organization has a business relationship with an independent contractor.<sup>2</sup> There are many indicators that the CRA uses to help assess an employer’s relationship with a contractor—for example, whether or not the contractor is responsible for operating expenses, if the contractor employs anyone under them, and if the contractor takes responsibility for submitting personal provincial and federal tax deductions to the CRA.<sup>3</sup> Another key component in identifying the nature of a contractor-employer relationship is common intent. For example, if both an employer and a contractor agree that a contract for services would best serve their needs, the two parties have an equal understanding of their employment relationship. Often intent is identified within a written agreement, however, it is important to note that a written agreement is not bona fide proof of an individual’s employment status.<sup>4</sup>

Discrepancies arise when someone who claims to be a contractor is really fulfilling duties similar to that of an employee by offering their services exclusively to one organization. For example, consider an accountant who has one client and works forty hours per week for that client at the client’s office. Such activity may then result in an individual being classified by the CRA as a personal services business (PSB). If a person is relegated to the status of a PSB, there are serious consequences. For example, a PSB cannot claim small-business tax deductions, be taxed at the small-business rate, or qualify for a general corporate rate reduction.<sup>5</sup> Upon being reassessed as a PSB the contractor could end up owing thousands of dollars in taxes. Additionally, disagreement often occurs when an independent contractor—upon the termination of a contract with an employer—wishes to claim severance or other entitlements generally granted to an employee. If a claim is filed, Canadian courts may award severance if the person can legally argue that he or she was actually dependent.

Today, due to a number of factors, the contracting landscape is significantly changing. For the past thirty years, Alberta’s legislation on the subject of contractors has remained unchanged.<sup>6</sup> However, the recently passed Bill 17 (which came into full effect as of January 1, 2018) includes an amendment to Alberta’s Labour Relations Code that changes the definition of “employee” to include dependent contractors.<sup>7</sup> Ontario too, has now enacted legislation in the form of the newly passed Bill 148. This bill has a significant focus on employee misclassification. Bill 148 does not re-define dependent contractors as “employees,” but it will place the onus on employers to prove that those who provide services to their organization are indeed contractors, not employees.<sup>8</sup> Additionally, the Ontario government is looking to crack down on the misclassification of employees as contractors, and will be conducting a series of audits in 2018.<sup>9</sup> With provinces like Alberta and Ontario now enacting legislation that further scrutinizes employer-contractor

relationships, businesses in these provinces may be hesitant to engage contractors for fear of repercussions should the contractor be re-classified as an employee or as dependent on the organization.

New legislation in Alberta and Ontario will mean change for Canada as a whole, as it is likely that other provinces will follow suit on updating their employment standards and labour codes. Consequentially, the impacts of this new legislation poses a significant risk to the contractor model in Canada as we know it. It is evident that change is on the horizon for a significant portion of Canada's workforce and the organizations who rely on them.

## PCSI Solution

Professional Contractor Solutions Incorporated (PCSI) and Aly Bandali (CEO of PCSI) have been breaking down misconceptions about risk mitigation related to the Dependent Contractor and PSB issues since the company's inception. Bandali's business model is not based on theory, but rather is backed by legal precedent. It is seeking to protect a multi-billion dollar industry by evolving the contracting model before it nears extinction as it has in other countries. But what exactly does PCSI do? PCSI provides risk mitigation solutions for both organizations and independent contractors. Their unique model significantly reduces the risk of employers being found guilty of employee misclassification or having their contractors deemed as dependent on their organizations. From the perspective of contractors, the PCSI solution significantly reduces the risk of contractors being reclassified as a Personal Services Business (PSB) by the CRA. PCSI has created a solution that helps alleviate the tax, severance and legal exposure for all involved. Additionally, PCSI offers the only CRA compliant solution available in Canada and thereby provides an opportunity for both employers and contractors to significantly mitigate risk and preserve the contractor model in Canada. Finally, the PCSI business model is founded upon decades old, never overturned case law. PCSI are innovators seeking to evolve the contractor model in Canada for the next generation of Independent Contractors.

PCSI accomplishes this through an innovative strategy. In essence, contractors invest into the partnership that is PCSI. They are subsequently protected from being reclassified because they are partners in a legal corporation. PCSI developed its core solution – PCSI Certification – to protect contractors from being reclassified as PSBs by the CRA and to protect the organizations who hire contractors from the ramifications of employee misclassification. Both organizations and contractors can think of PCSI as having insurance. For employers, it is like insuring their contractor model. For contractors, it is similar to insuring their status as an independent contractor.

For example, if the CRA deems a contractor-employer relationship to be wrongfully classified as one that is independent, the CRA can call for up to four years in taxes to be repaid. But with the assurance of PCSI's modest annual premium, the threat of misclassification is dissolved. PCSI saves contractors and employers from potentially thousands of dollars in unpaid taxes, penalties, and interest owing which would apply if the CRA were to classify the contractor relationship as different than was initially intended by the two parties. Not only is PCSI CRA compliant, they also offer a legal defense fund to PCSI Certified Contractors and the employers who engage with them.<sup>10</sup>

As governments increase the legislation around employee misclassification, un-intentionally eroding the contracting model, PCSI's solution is continuing to mitigate risk for both businesses and independent contractors thereby protecting the contractor model in Canada. PCSI is sticking up for small businesses and protecting the entrepreneurial spirit of those who want to remain independent from traditional forms

of employment, and also protecting employers who rely on contractors. More and more young people too, are drawn towards the rewarding lifestyle that working independently can offer, and as a result, contracting in 2018 is on the rise. With nearly 400,000 self-employed persons and counting in Alberta alone, PCSI's relevance can only continue to grow.<sup>11</sup>

PCSI's approach to protecting the contractor model is innovative; PCSI has used case law as a foundation on which to build their business model. They offer a real solution for both contractors and employers because they have done all the required research to ensure legal and CRA compliance. Upon a contractor becoming PCSI Certified, the contractor knows they have mitigated their risk of being reclassified as a PSB by the CRA. In turn, employers engaging with a PCSI Certified Contractor know that they have reduced their organization's risk of being found guilty of employee misclassification or having that contractor deemed as dependent on their organization.

PCSI is also innovative because it is the first company of its kind in Canada. Before Professional Contractor Solutions Inc. came along, no one else in the country had developed a real solution in response to the evolving contracting landscape in Canada. It truly is a Western Canadian innovation.

## Conclusion

To conclude, employer-contractor rules can be confusing—even to those who are actively working as contractors, or actively employing contractors. However, in this time of new legislation and increasing government regulation regarding the contractor model, PCSI is bringing clarity to the issues surrounding contractors, and offering a simple solution to all those involved. This is one Canadian company that is making life easier for contractors and employers by taking an innovative approach to protecting the contractor model in Canada. PCSI provides assurance to both contractors and employers that they are onside with the regulations put in place by the government and the CRA. PCSI is allowing independent people to maintain their independence as independent contractors. Similarly, employers are able to maintain their relationships with contractors—who are an essential part of our economy. In doing so, they are saving employers from severance and potential legacy tax obligations, legal fees, misclassification fines/penalties and lost productivity, and protecting contracting as a way of life.

## About the Author

*Daniel C. Randell is a student of history and business at Ambrose University in Calgary, Alberta. In his undergraduate studies, he has written everything from historical and exegetical essays to poetry and prose. After receiving his Bachelor of Arts, Daniel hopes to pursue an MA in history in the United Kingdom. Daniel can be contacted via [LinkedIn](#) or [Twitter](#).*

## Endnotes

- <sup>1</sup> Handy, C. (1989). *The Age of Unreason*. Boston: Harvard Business School Press, 184.
- <sup>2</sup> Alberta Human Services. (2008). *Employee or Contractor? Know the Difference* [PDF]. Retrieved from: <https://alis.alberta.ca/pdf/cshop/contractor.pdf>, 4.
- <sup>3</sup> Canada Revenue Agency. (2017). *Employee or Self-Employed?* [PDF]. Retrieved from: <https://www.canada.ca/content/dam/cra-arc/migration/cra-arc/E/pub/tg/rc4110/rc4110-17e.pdf>, 6.
- <sup>4</sup> Alberta Human Services. (2008), 4.
- <sup>5</sup> Bouw, B. (2017). How contract workers navigate the challenges of the CRA. *The Globe and Mail*. Retrieved from: <https://www.theglobeandmail.com/report-on-business/small-business/sb-money/how-contract-workers-navigate-the-challenges-of-the-cra/article35152358/>
- <sup>6</sup> Government of Alberta. (2017). *Labour Relations Code Changes*. Retrieved from: <https://www.alberta.ca/labour-relations-changes.aspx>.
- <sup>7</sup> Bill 17, *Fair and Friendly Workplaces Act*, 3rd Sess, 29th Leg, 2017. Retrieved from: [http://www.qp.alberta.ca/1266.cfm?page=2017ch09\\_unpr.cfm&leg\\_type=Acts&isbncIn=9780779797561&display=html](http://www.qp.alberta.ca/1266.cfm?page=2017ch09_unpr.cfm&leg_type=Acts&isbncIn=9780779797561&display=html).
- <sup>8</sup> Bill 148, *Fair Workplaces, Better Jobs Act*, 2nd Sess, 41st Leg, 2017. Retrieved from: [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=4963](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4963).
- <sup>9</sup> Vassos, G. (2017). Bill 148 Amendments to Ontario's Employment Standards and Labour Laws. *HR Professional Now*. Retrieved from: <http://hrprofessionalnow.ca/index.php/legal-words/458-bill-148-amendments-to-ontario-s-employment-standards-and-labour-laws>.
- <sup>10</sup> PCSI Website. (2017). Retrieved from: <https://pcsincorporated.ca/for-contractors/>.
- <sup>11</sup> Perch. (2015). Hanging out your shingle: self-employment in Alberta [PDF]. *ATB Financial*. Retrieved from: <https://www.atb.com/learn/economics/Documents/perch-self-employment.pdf>, 5.