

Employment Income or Student Financial Assistance - Sas Ansari

Author : admin

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Russell v MNR, [2016 TCC 142](#)

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This was a question of "insurable employment" under the [Employment Insurance Act](#). At issue was whether the taxpayer (an undergraduate honours student) who performed research in a lab at a University and who was issued T4 slips was an employee or a student receiving financial assistance. The amounts received were funded in part by the Natural Science and Engineering Research Council of Canada.

ANALYSIS

The Court began the analysis by looking at the statutory definitions in the [Employment Insurance Act](#) and the [Canada Pension Plan Act](#): 5(1) - insurable employment (EIA); 2(1) - "Employment" (CPPA); 6(1) pensionable employment (CPPA).

The Court reviewed the decisions dealing with the characterization of amounts paid by universities to students. Most dealt with Masters, Doctoral, or Post-Doctoral students.

Rizak v Minister of National Revenue, [2013 TCC 273](#), [[Summary Here](#)] was a case where a doctoral student was paid annual stipends of \$21,000 as a graduate research assistant and was not considered an employee by the University. In that case, the TCC held that the student as an employee and stated, in reference to the test applicable to doctoral students:

25 In *Caropreso v. R.*, [2012 TCC 212](#) (T.C.C. [Informal Procedure]), Justice Woods was also asked to consider whether a postdoctoral fellow was an employee. She acknowledged that the case law on the issue was divided. She then set out what she believed was the appropriate test that should be applied in determining whether a taxpayer has received funding as a student or been compensated as an employee. At paragraph 20 she stated:

The root of the difficulty is that payments to postdoctoral 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.

Other cases considered in Rizak are:

28 Graduate students are in a very different situation than postdoctoral fellows. Graduate students have not yet obtained their degrees. Their primary reason for being at a university is to obtain their degrees. For those graduate students who choose to work as graduate research assistants, their work is geared, at least in part, towards that end. Therefore, it is important to review how the Court has dealt with cases involving graduate students.

29 In *Hammell v. Minister of National Revenue*, [1994] T.C.J. No. 921 (T.C.C.), a masters student was interested in researching fish epidemiology. The university did not have a professor who specialized in fish epidemiology but it did have a professor who specialized in fish pathology and one who specialized in epidemiology (though not of fish). Those professors agreed to jointly supervise the student's research. The research was not connected to any research that the professors were doing. The student applied to the university for an annual stipend of \$20,000. He was granted the stipend based on the fact that what he was hoping to achieve in his studies in general meshed with the university's goals. Not all masters students received stipends. While the student did a lot of work in the department's laboratories to assist with other people's studies, that work was done on a voluntary basis. He was not required to do the work. He did it purely to gain experience in his field and to advance his prospects of ultimately being asked to join the faculty at the university. The Court held that the student was not engaged in insurable employment.

30 A similar result occurred in *Hospital for Sick Children v. Minister of National Revenue*, [1993] T.C.J. No. 388 (T.C.C.), a case involving a masters student. At paragraph 65 of that decision, Justice Christie stated:

The evidence shows that it was accepted by Dr. Riordan and the [student] that the former was not vested with any real authority to specify the work to be done by her. This was decided by arriving at a consensus. He said that there was no instruction or direction involved. It is an academic process whereby some agreement is reached on the subject of the research. The [student] specifically stated that Dr. Riordan could not obligate her with reference to areas in which to do research. Changes that occurred in the focus of the [student]'s research came about at her instigation. Nor did Dr. Riordan have control over the manner in which the [student] conducted her research. When

asked if he could tell her what techniques to use, she replied, no he could only make suggestions in that regard. His evidence is to the same effect. In contrast he said with reference to the technicians that he designed the experiments and he analyzed the results. . . .

31 That decision was followed in *Nabet c. Ministre du Revenu national*, [1999] T.C.J. No. 79 (T.C.C.), a case involving a doctoral student, where Justice Lamarre Proulx found the student not to be an employee. She stated at paragraph 13:

The case at bar is similar to *The Hospital for Sick Children* case, *supra*, and it is my view that that decision properly sets out the law regarding the legal status of a student paid out of research funds: there is no insurable employment if the student is paid for research done as part of a work program the student has drawn up himself or herself; although a professor may have helped the student establish the work program, that program remains the student's program and serves the student's purposes; the student controls the use of his or her time; the professor is there to give advice; the work is done for the student's benefit; no services are provided to an employer.

32 A different conclusion was reached in *Charron v. Minister of National Revenue*, [1994] T.C.J. No. 47 (T.C.C.). In that case Justice Archambault found that a masters student was an employee. Like Mr. Rizak, the appellant in *Charron* began work before her period of studies began. At paragraph 10, Justice Archambault stated:

. . . The evidence established that the appellant provided her services to the payer and that, in providing her services, she received instructions on the work to be done and the way in which it was to be done. She was not free to choose which experiments to do: it was Dr. Moss who decided on the procedure to be followed. . . .

[see also *Bekhor v Minister of National Revenue*, 2005 T.C.J. No. 314, and [HERE](#)]

The TCC held that the same test should be applied to undergraduate students - look at what the dominant characteristic of the payments is (para 16), whether it was compensation for work or student assistance (para 19). The court considered the following factors:

- The legal form used by the parties
- Whether the party was treated the same or different from others treated as employees;
- Source of the funding out of which amounts are paid;
- Whether there is a material difference between the work undertaken by those the university considers employees and those it considers award recipients;
- Whether the research relates to the work of the supervisor or not;
- Whether the research was undertaken under the professor's direction or instruction;
- Whether the student had to submit progress reports, meet deadlines, discuss research methods and results with the professor, and how regularly they were required to work in

a week or day;

- Whether when absent had to let the professor know and make up for lost time;
- Whether the student applied for and received funding in his/her own name or whether the grant from which amounts were paid was issued to the professor;
- Whether informed that employment was not insurable.

Here, the court held that the dominant character was financial assistance to a student working on an honours thesis, with only a secondary benefit to the university and the professor (para 22).

Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 &3

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