



Contract for Services Guidelines

This outline has been modified from the Coaches Association of British Columbia to fit the unique needs of dance educators. It has been developed as a resource for teachers and to help guide studio owners and directors in their understanding the issues behind dance teaching contracts for service and the negotiation process.

It is important to emphasize that no two dance teaching contracts will be alike, however all contracts should have some common elements. Some dance studios in Canada are still operating without contracts for services, but at this day in age both the teacher and studio owner must protect themselves, thus each contract should be tailored to suit the teacher's particular circumstances.

As a result, this guide does not advocate a “model” contract; rather it provides some essential components of a contract and gives the teacher the necessary information to negotiate contract terms that best meet his or her needs.

The Canadian Dance Standards does not carry any legal responsibility for the implementation or creation of teaching contracts developed in any way that have or have not been influenced from our contract for services guidelines.

A Guide to Employment Contracts for Dance Teachers

An *employee/coach/teacher* is just like any other employee of an organization—someone who works for regular pay, with income taxes, employment insurance premiums, and government pension plan contributions withheld by the employer and submitted to the government in regular instalments. An employee/coach/teacher may participate in the employer's benefits and private pension program, may have a written job description, and may have a written employment contract or other written agreement with the employer.

A *self-employed coach/teacher* is an independent contractor who provides services to a sport/arts organization, dance club, or institution for an agreed-upon fee. The self-employed coach may also enter into a contract with individual athletes/dancers. The terms and conditions of the relationship between the self-employed teacher and the employer are set out in a written agreement. The employer pays the self-employed teacher the full amount of the contract, according to the agreed-upon payment schedule, and does not withhold taxes or other payments. The self-employed dance teacher is essentially his or her own employer and is responsible for making tax and other payments to the government directly.

What is better for dance teachers in BC?

There are advantages and disadvantages associated with each type of employment. Sometimes the dance teacher will not have an opportunity to choose one over the other, as it will be clear that the position calls for an employee rather than an independent contractor or vice versa. However, where the dance teacher *does* have the opportunity to negotiate one or the other arrangement, he or she will want to carefully consider the advantages and disadvantages of each respectively. The following information is provided to help dance teachers with the decision making process when applicable.

DANCE TEACHERS HAVE THREE MAIN POINTS TO CONSIDER:

1. personal liability
2. taxes, benefits, and pensions
3. dismissal

PERSONAL LIABILITY

This issue is primarily a legal one. Typically, an employer is responsible (or “liable”) for the wrongful acts of employees acting within the scope of their employment duties. This is known as *vicarious liability*. In a situation where the negligent behaviour of an employee causes injury or damage to another party, the employer will be held vicariously liable, or responsible, for those losses—even though the employer may have done nothing wrong. The underlying rationale for this legal principle is that the employer and employee are considered associated parties in the ongoing business of the organization. They may also be described as having a *master/servant relationship*, in which the employee is the servant or agent carrying out the directions and actions of the employer. There is also a practical reason for this principle. From a public policy perspective, the vicarious liability principle provides an injured party with a source from which to collect damages in the event of a successful legal suit. Most employers would have the resources (usually insurance) to cover such damages, whereas the individual employee typically would not.

Independent contractors are typically not indemnified by the organizations with which they have a contract. It is not in the organization’s best interest to indemnify a person over whom they do not exercise control. However, a dance teacher may be successful in negotiating some protection through an organization’s insurance program by being named as an additional insured on the organization’s liability policy. Such coverage may jeopardize the teachers independent-contractor status, and the truly independent dance teacher should probably assume responsibility for his or her own insurance.

The liability situation for the self-employed dance teacher is complex. An independent contractor is his or her own employer and is therefore responsible for his or her own negligent acts. Instead of having the protection of the employer’s liability insurance policy, the contracted dance teacher may be *personally liable* for his or her own actions and may also be responsible for any legal costs that might be incurred to defend a lawsuit from other parties, whether or not the lawsuit is successful. The independent contractor clearly has legal obligations that the employee does not. These obligations will vary depending on whether the individual operates under an incorporated business, an unincorporated sole proprietor (or other) but in all cases they are significant. The prudent self-employed dance teacher may wish to purchase liability insurance. And, depending on the terms of the contract with the dance studio or organization, the contracted dance teacher may be *required* to purchase this insurance.

TAXES, BENEFITS, AND PENSIONS

An employer is responsible for withholding certain payroll deductions on behalf of an employee, including income tax, employment insurance premiums, old age pension, and, in some provinces, health care. Employers also pay Workers' Compensation Board (WCB) premiums for their employees and are required by provincial and territorial employment laws to pay overtime wages or to provide time off in lieu of extra time worked. They must also pay wages on statutory holidays on which the employee does not work and provide the employee with a minimum number of paid holidays per year. Some employers may also contribute to additional benefits for employees, such as extended health care and retirement savings plans. An independent contractor, on the other hand, receives none of these benefits or "perks." Unless it is negotiated specifically, the independent contractor does not get paid for overtime or holidays. He or she is not covered by Workers' compensation and, in many cases, must purchase personal health care insurance. The independent contractor is also responsible for setting up his or her own benefits and pension programs.

Tax advantages alone are often the deciding factor for the dance teacher who opts for self-employment. With careful tax planning, it is possible to achieve higher earnings when self-employed than when employed, particularly if the self-employed individual has an incorporated company. There are two reasons for this tax advantage: first, many ongoing expenses can be legitimately linked to the pursuit of business and can be used to offset income before taxes, and second, except at very low income levels, the corporate income tax rate is typically lower than the individual income tax rate. There are also disadvantages to self-employment, including the ongoing administrative work required to keep accurate financial records, to collect and remit taxes, and to submit annual tax returns. If the individual chooses to incorporate, there is some time and cost involved. In evaluating the pros and cons of self-employment, the dance teacher should always balance the tax advantages against the financial risks, which include the lack of benefits, disability insurance, and income security.

DISMISSAL

This third issue relates to job security. Under provincial law, an employer must have sound and provable cause to dismiss an employee without notice. Lacking cause, as defined by the law, an employer can terminate an employee only if the employer provides proper notice of termination as set out in employment law or, alternatively, if the employer pays severance pay in lieu of notice. The relationship between the independent contractor and the employer, on the other hand, is governed solely by the terms of the contract the parties negotiate, and becomes a matter of contract law as opposed to employment law. Any dispute about wrongful dismissal that may arise is dealt with as a breach of contract, not as an employment matter. Ideally, the existing contract will contain clear terms about termination and dismissal. In the worst case scenario, involving a poorly drafted contract, the contract would contain no such provisions, and the contractor would have little recourse for obtaining notice or severance pay in lieu of notice.

EMPLOYEE VERSUS CONTRACTOR: FOUR TESTS TO DETERMINE EMPLOYMENT STATUS

If your employer pays you regularly, withholds taxes and other deductions, gives you holidays, and issues you a T4 income tax slip at the end of the year, you are probably an employee. If you signed a written contract for services, receive an honorarium, stipend, or other lump sum, and your employer does not withhold taxes and other payments, such as EI or CPP, you *may* be an independent contractor. But you may, in fact, be an employee operating under the guise of an independent contractor. Not clearly establishing status can create serious problems for both the dance teacher and the employer. There are four tests typically used in law to determine whether an individual is an employee or is self-employed:

1. the control test
2. the integration or organization test
3. the economic reality test
4. the specific result test

No single test determines employment status; the tests are used in combination and are applied to the circumstances of each individual case.

CONTROL TEST

The greater the degree of control and independence the worker has in the workplace, the more likely that person would be considered an independent contractor. The degree of control depends on the circumstances of the case and often varies with the type of work and skill of the worker. Several factors, such as the authority to make decisions, hire assistants, define the scope of the work, set one's own schedule, or terminate the working relationship, will influence the degree of control the individual has. In the dance teaching context, control would also include the extent to which the dance teacher has authority to determine coaching methods and to make teaching-related decisions. Control would be influenced by the lines of authority and accountability. Is the teacher expected to "report" regularly to an individual such as the technical director or the president? Does the teacher need to obtain permission from the executive to implement a certain training program? The more the employer dictates coaching activities, the less control the teacher has.

INTEGRATION OR ORGANIZATION TEST

This test is influenced by whether the contractor provides the same or similar services to other clients at the same time. If the contractor *does* provide services to others, there is a strong argument that the contractor is truly independent. Contractors who solely teach dance as a means of financial support in their life typically do so for a variety of different customers (customers are anyone who is paying for their teaching services).

ECONOMIC REALITY TEST

This test deals with the possibility of financial risk. It has several facets including control, ownership of tools or equipment, and chance of profit and risk of loss. The matter of control has already been discussed. In dance teaching, ownership of equipment is a particularly important

consideration. Does the teacher supply his or her own music and equipment such as ipods/ cds, whistles, stopwatches, clipboards, first-aid kit, or other training devices and supplies? Does the teacher provide forms, documents, and training logs? Or is the teacher entirely reliant upon the employer to supply all the necessary equipment and supplies to carry out the task? A self-employed person would likely pay for his or her own equipment and supplies (and claim them as an expense against taxable income); an employee would have these supplied by the employer. Similarly, a self-employed teacher would likely include in a contract a certain amount for administrative expenses (including out-of-pocket expenses such as meals, travel, and accommodation). An employee, on the other hand, would be reimbursed by the employer for out-of-pocket expenses. Self-employment usually creates an opportunity for profit and a risk for loss. A contractor who performs competently will be financially rewarded under the terms of the contract. Conversely, if a contractor's work does not satisfy the terms of the contract, contract payments may be withheld. Likewise, an independent contractor would not get paid if he or she were unable to complete the work due to illness, adverse weather conditions, or other factors beyond his or her control.

SPECIFIC RESULT TEST

This final test relates to whether the work is project specific or ongoing. An employee/employer relationship generally exists when an individual provides services to an employer over a period of time, without any reference to a specified result or task. If, however, an individual is hired under a contract for services for a specific time period, to achieve a specific result, or to do a specific task, the relationship may not be viewed as one of employee/employer. A contract to teach a class to prepare for and compete at a major competition could be construed as a contract that has a specific result in mind. Likewise a recreational dance season that has the end goal of a recital or performance can be viewed similarly. However, if the season is continued over a long period of time with repeating scheduled structure, this is typically a employer/employee relationship. In the case of dance in Canada the season normally runs from September to June, the length of this season could be seen as a seasonal contract for services or a short term employee. Dance teachers must be careful to determine which situation they are engaged in.

In summary, the four tests are used to determine if an individual is an employee or a contractor. The focus of these tests is the true nature of the relationship, regardless of what it might be called on paper or what the parties believe the relationship to be. Even a written contract that states that the relationship is one or the other will not conclusively establish that relationship if the nature of the work proves it to be otherwise. Understanding the difference between the two models of employment gives the dance teacher a clearer idea of the risks faced as an independent contractor. Understanding these risks will help the dance teacher negotiate more effectively for a contract that is personally beneficial.

Basic Components that Should be Included in a Dance Teaching Contract

A written contract is *essential* if the dance teacher is self-employed as an independent contractor. In addition a written employment contract is *strongly recommended* even if the teacher is an employee. The following information is presented in very general terms and would be applicable to all types of employment contracts.

OBLIGATIONS OF THE PARTIES TO CONTRACT IN GOOD FAITH

Each party has an obligation to deal honestly with the other. As discussed earlier, the employer must be clear in representing the availability of work, the nature of the work, the wage, and the conditions of employment. The prospective employee must accurately represent skills, qualifications, and history of past employment. The same honesty is required of parties entering into a contract for services. A contract can be voided if it is shown that one party substantially misled the other.

No law in Canada precludes an employer from asking a prospective employee whether he or she has a criminal record—even if that record is unrelated to the work to be performed. However, both provincial and federal human rights legislation prohibits employers from dismissing, refusing to hire, or otherwise penalizing a person simply because he or she has been convicted of a criminal offence that is not connected with the employment. Due to the nature of business and the involvement of children/facility property, dance studio owners that are looking to hire prospective teaching staff may determine it is in their best interest to conduct a criminal record check before the negotiations of a contract are made.

ENFORCEABILITY

The contract is enforceable only if both parties agree freely and voluntarily to be bound by its terms. If one party misrepresents important conditions to the other, uses its power to impose unfair or unreasonable provisions on the other, or commits a fraud on the other, the contract may not be valid. However, this does not preclude one party from being in a stronger bargaining position than the other, in order to obtain more favourable terms in the contract. In fact, it is a rare contract that arises between two parties of equal power and strength. A contract can be voided on this basis only if there is a blatant and coercive imbalance between the parties.

DEFINING THE PARTIES

An employee is hired in his or her own personal capacity. An independent contractor may choose to enter into a contract in his or her own personal capacity or as an incorporated company. Incorporation provides certain tax and liability advantages. However, incorporation also involves additional costs, inconvenience, and paperwork. A dance teacher considering incorporation should consult with a lawyer and an accountant to obtain an accurate picture of the costs and relative advantages and disadvantages of incorporation. The other party to the employment contract is usually the incorporated sport organization, dance club, or institution (although the president, member of the executive committee, or executive director signs the contract on behalf of the organization). Before entering into a contract for services, the contractor should

be satisfied that the organization is stable and operating on a sound financial basis. A simple check can be made by talking with other suppliers or contractors. The contractor-to-be can also ask to see financial statements and an annual report, although the organization is not obliged to supply them.

Ensuring that the employer is solvent is particularly important for the independent contractor, because he or she will have limited recourse in the event the organization becomes bankrupt and is unable to make the necessary payments to fulfil the contract. This is somewhat less important for the employee, because the law imposes an obligation on directors of organizations to *personally* fulfil payroll and certain related obligations.

JOB DUTIES OF THE DANCE EDUCATOR

One of the first clauses a contract should establish is a description of the position and the scope of the job. The contract should identify the job title and should describe *in detail* and as broadly as possible the responsibilities and duties of the position. Information needs to be clear and concise. What exactly are the duties of the teacher? The job description is a key part of the contract, upon which many other sections of the contract will depend. Legally, a job description is important because it defines the scope of employment duties for the purposes of assigning liability (responsibility) for actions. An employer is only liable for the actions of employees that fall within their defined scope of duties. As well, an independent contractor who has a liability insurance policy may find that he or she is insured only for those actions that fall within the written job description. It is for this reason that the job description must be accurate and broadly worded. For example, if certain parts of the job entail driving a vehicle and supervising minors while travelling away from home, these duties should be stated in the job description.

AUTHORITY OF THE DANCE EDUCATOR

Following closely on the description of duties, the contract should also define the scope of the teacher's authority. Does the individual have the authority to make and implement decisions, or only to implement decisions made by others? Does the individual have the authority to hire assistants? What is the dance teacher's role in developing and applying selection criteria? Implementing discipline, and designing and scheduling training programs? The contract should clearly set out what the teacher is authorized to do and where this authority comes from.

REPORTING RELATIONSHIP

The contract should specify who the teacher communicates with and reports to in the organization, as well as how often and in what format (written or verbal). Ideally, this person (or group) will understand the technical aspects of dance instruction and will also have a formal role in the teachers' evaluation and in any decisions about the teachers continuing relationship with the organization. This is commonly expressed as 'reports to' in contract form.

COMPENSATION

This part of the contract deals with much more than simply the pay that the individual has negotiated. A contract between employee and employer should include all forms of compensation that have been negotiated, including regular salary, overtime pay, benefits (extended medical and dental coverage and disability insurance), car and per diem allowances, holiday structure and pay, the employer's contribution to a pension, the employer's contribution

to professional development and dance teaching accreditation/certification, future salary increments (whether fixed in advance or performance-based), and bonus structure. The contract should also specify the schedule for payments (e.g. weekly, biweekly, monthly) and the method of calculating payments. In this section the studio director should outline the expectations of the teacher with respect to services other than teaching. Will the teacher be required to attend competition? Will they be paid for this? etc. A contract between independent contractor and client should specify the amount of payment that has been negotiated, the frequency of payment, and compensation for out-of-pocket expenses (e.g. gas, mileage, parking, travel, accommodation, supplies and materials). The contractor may also wish to negotiate a bonus package or other reward for achieving certain performance objectives.

DURATION

An employment contract is typically open ended in its duration, although an “anniversary date” of employment is established for purposes of performance and salary review and review of the contract itself. At more senior levels of employment and in executive positions, the contract may specify a duration. A contract for services is rarely open ended. Such contracts can have a duration of any amount of time and may contain clauses relating to the renewal of the contract for an additional period. For example, the contract might have a fixed term of two years with an option to renew for an additional year. The renewal option usually does not require that the whole contract be opened up, but only that certain aspects of it be reconsidered, such as salary or compensation.

RENEWAL

The contract should be specific about how the renewal process will occur. For example, is the decision to renew a joint decision of the two parties or solely at the discretion of the contracting party? Is the decision to renew formally linked with the review of the contractor’s performance? Ideally, the contract should set out timelines so that the decision to renew (or not renew) is not left to the last moment. Instead, the contractor should be given ample notice that the contract is not being renewed, so that he or she can pursue other opportunities. It may be possible to include a clause that extends the contract at a specified rate of remuneration until such time as notice to not renew the contract is given or until the contract is successfully renegotiated.

PERFORMANCE REVIEW

Performance review is an often overlooked area, both in policy and in practice. The contract should specify how the individual’s performance is going to be evaluated—not only what criteria will be used in the evaluation and how they will be weighted, but also who will carry out the evaluation, at what times, and in what format (written or verbal). Will the performance review process provide the dance teacher with an opportunity for input or feedback? Performance reviews are critical because they form the basis upon which major decisions are made, including decisions to penalize, terminate, or reward employees or contractors. Without a performance review and the proper notice a studio may find it difficult to terminate a poor performing contractor because of the standing agreement. This is why a performance review clause is important in the contract as it provides the means to terminate the contract if necessary.

PLACE OF WORK

The contract should specify where the work is going to take place. If travel is a requirement of the position, the contract should specify how travel costs are to be compensated. If temporary relocation to another area is a requirement, the contract should clearly specify what relocation expenses will be covered and how.

EXCLUSIVITY AND NON-COMPETITION CLAUSE

The topic of exclusivity and non-competition clauses in dance teaching contracts is one of continued debate. If these clauses are to be entered into a contract they should be done so with great consideration and clear communication. To avoid potential conflicts of interests, some contracts contain exclusivity clauses that prevent the contractor from offering services to other clients while working on a project. Such clauses may be legitimate if the dance teachers position is clearly full time, but otherwise the dance teacher should not agree to any restrictions on being able to teach elsewhere. This is particularly important for an independent contractor as this is agreeing to give up their ability to provide their services elsewhere, (which is one of the factors that is important to their contractor status) and it is their means of financial support. If an exclusivity clause is to be entered into a dance teachers contract the terms around the exclusivity must be clearly outlined. If the clause states the teacher/service provider cannot work with other customers/clients what are the conditions around this? Can the teacher accept contracts at some competitors but not others? (some may be more threatening to the success of the business). In what kilometre radius can the teacher look for additional work? When entering exclusivity clauses into contracts it must be done with great detail, clear communication and understanding by both parties agreeing to the terms.

A non-competition clause protects the employer from a former employee using knowledge and experience acquired during the course of employment to compete against the employer. Although such clauses are common in the private sector and are quite legitimate, they should only target those employees whose knowledge of the employer's business could damage the employer's place in the market. Generally, the more specialized and complex the services, and the more an employee is in a position to influence the employer's clients, the more likely a non-competition clause will be upheld by a court.

Exclusivity and non-competition clauses in dance teaching contracts are complex in nature. The purpose for which they exist in some teaching contracts is to prevent teachers from leaving studios and relocating to another studio (or opening their own) and taking existing clients with them. However, by asking a prospective teacher to agree to not teach/provide services to other studios/clients a studio owner is putting a financial strain on that teacher. He/she may be required to drive considerable distances to other townships in order to find employment. This in turn may strain the longevity of a dance teachers career all together because of the significant travel times and loss of wages to/from other cities.

A lot of teachers find non-competition clauses frustrating, and as discussed there is a lot of reasons why in many cases they have a valid complaint. Here is an example from another industry; if a carpenter was building you a house would you insist that he did not build a house for somebody else? Probably not. If the carpenter was building you a house that was to be entered into a major architectural competition (that would provide future service contracts for

your firm) and you were against another company for these contracts, you may be more likely to restrict the carpenter from also working for the competitor. In this case the non-competition clause is more appropriate. As previously outlined in the employee vs. contractor definition; A sub-contractor is someone who provides services to several different customers, be restricting a teachers ability to teach in other locations a studio director is also causing conflict with respect to the classification of a teachers service provision conditions. However, should the studio owner feel that the teacher may be a risk of leaving the company and taking a significant proportion of the existing clients (and subsequently the momentary payment associated with those clients) elsewhere he/she may wish to enter a non-competition clause into the contract for service. In this case it is important that the clause be clearly outlined with precise detail.

For example; the service provider agrees that he/she will not accept payment for services from an existing client of *example business* for the duration of one year after the termination of this contract unless the contract has been renewed by both parties. In addition the service provider agrees to refrain from soliciting existing clients of *example business* during and after the completion of the obligations of this contract. This agreement will survive indefinitely upon termination of the services provided.

CONFIDENTIALITY PROVISIONS

Confidentiality provisions, which are common in contracts, serve two purposes: to ensure that the employee or contractor who has access to the employer's confidential information keeps it confidential both during and after the contract and to prevent the parties from discussing details of the contract once it is terminated. A contract can also stipulate confidentiality about the details of a dispute between the two parties, the reasons for dismissal, the terms of any settlement, or the amount of severance pay. Confidentiality provisions work both ways; they can be beneficial to the employer and the employee or contractor.

TERMINATION AND SEVERANCE

To avoid potential misunderstandings, both parties should agree upon and identify the grounds that will constitute cause for termination of the contract (in the case of an independent contractor) or cause for dismissal (in the case of an employee). An employee terminated for cause is not entitled to notice or pay in lieu of notice. However, an employee dismissed without just cause is entitled to a "reasonable period of notice" of the pending dismissal or "severance pay" in lieu of such notice. Unless there is prior agreement between the parties, the minimum notice period is set out in the provincial or territorial employment legislation. (In many provinces, two weeks for each year of service is the minimum.) If contractor is terminated according to the termination provisions of the contract, it may be appropriate for the contract to include a notice period.

INDEMNIFICATION AND INSURANCE

Employees are indemnified by their employers for legal costs and damages they might incur, if such losses arise from the employee properly performing his or her job duties. Typically, an employment contract does not make reference to this because it is a clear entitlement under the law. In the case of a subcontracting contract these terms should be clear.

ARBITRATION

Arbitration is a process whereby the parties submit a dispute to an impartial third party for decision after hearing from both sides. The parties agree in advance to be bound by the decision of the arbitrator. Arbitration is intended to avoid the delay, the expense, and the formalities of ordinary litigation in resolving disputes. An arbitration clause is recommended for all contracts, for several reasons. One of these is that arbitration enables the dispute to be settled outside the organization and away from personalities that may have clashed and from views that have become entrenched. Arbitration is also a cost effective way to resolve disputes, particularly if it appears that the parties are headed toward litigation. Two critical aspects of the arbitration clause are that arbitration shall be compulsory rather than optional and that the arbitrator's decision shall be final and binding on the parties.

SEVERABILITY

This is a minor housekeeping item. Generally, where one clause in a contract is void, the whole contract is effectively voided, unless the parties agree otherwise. Thus most contracts have a severability provision, which results in severing any void clause from the remainder of the contract and ensuring the whole agreement is not struck down.

CONCLUSION

Finally it is important the contracts for services include the full name and address of both parties involved in the agreement for service. Furthermore the contract must be signed and dated in the presence of a witness. Both parties must have a copy of the signed agreement.

If you have additional questions regarding contracts and service agreements please email the Canadian Dance Teaching Standards office at: info@canadiandancestandards.com