

# SR&ED Stakeholder 2019

focus

medical claims through an MPC



# introduction

- Julie Bond is the President of Bond Consulting Group out of Toronto
- Practice specialized in SR&ED only
- About 30% of our firm's cases are in the medical sector, MPCs, naturopaths, therapists, research groups



# agenda

- Contract analysis
- FTCAS
- tips



# contracts

- There are doctors that are effectively staff employees at hospitals & universities, and they have defined research activities clearly stipulated in their employment contracts
- They may still have an MPC corporation, but for all intents and purposes, they are staff employees under direction of another organization, with employment benefits, tenure.
- CRA has been trying to crack down on these types of claims



# contracts

- There are doctors that primarily work as independent professionals with an MPC
- They may also have a relationship with a hospital or university with some “boiler plate” clauses relating to academic responsibilities, lecturing, “research”
- These doctors are not under direction to perform R&D activities
- CRA appears to be targeting these MPC / independent professionals



# contracts

- CRA is scrutinizing every line of these contracts
- Many of these contracts state that the doctor is an independent contractor and specifically not an employee
- CRA often assesses these contracts in the manner which allows them to deny an SR&ED claim, even when other evidence make it clear that Doctor is not working at direction of any other institution, and is not an employee



# contracts

- CRA often dismisses any verbal testimony given by the professional doctor regarding the practical meaning of the contracts
- CRA may take a very long time to review an MPC case – 6 months to a year
- CRA may look up professional profiles / websites, to make the point of employment over subcontractor
- CRA may find public university or hospital policy and assume it applies to the doctor in the SR&ED claim



# contracts

- CRA may ask for a long list of documents, such as:
  - Appointment letters, performance reviews, university policy, REB applications, REB approvals, grant applications, grant approvals
- CRA may give you the documents you need to provide if you intend to dispute the denial
- IP is a “red herring” because hospitals and universities are not-for-profit, and cannot claim SR&ED anyway – no double-dipping possible





# FTCAS

- First Time Claimant Advisory Service
- First time MPC claims often receive a presentation which clearly dissuades against further claims
- In some cases, a clear statement.  
Paraphrasing: *You are not eligible, do not claim again, You will be denied.*
- The next claim may be approved even after an intimidating FTCAS meeting



# TIPS

- CRA is looking for proof that the doctor is working on behalf of the MPC, and not at the direction of another institution
- As long as the doctor is an independent subcontractor through his/her MPC, there can be no employment relationship implied
- In case of SR&ED Joint Venture, each entity can claim its own expenses. This most certainly applies, because most hospitals are not specifically paying an MPC for research activities



# TIPS

- Prepare a contract for R&D work, from the MPC to the doctor
- Document R&D time clearly, that does not over-lap with other professional obligations, clinic time, patient time, academic responsibilities
- Include evenings & weekends where appropriate – legitimately, many doctors use this time to devote to private research
- Ask for a PCPR (Pre Claim Project Review) if you've had a bad FTCAS – gives you an opportunity to ask about SR&ED Policy for MPCs



# TIPS

- Review contracts with hospitals & universities, ask the institution to contract the MPC directly, and not the person / doctor
- Grant applications should be in the name of the corporation, and funds should be directed to the MPC
- Deduct any grants received by the corporation for research from the SR&ED claim
- Provide the personal tax return to CRA to prove that the doctor is not receiving employment T4 income from the contracting hospitals or universities



# tips

- File a Notice of Objection within 90 days
- If you miss the 90 day deadline, you still have another 365 days to file
- Be prepared to go to the Tax Court of Canada
- Tax Court Judge only requires the Plaintiff to prove “on the balance of probabilities” that the work was performed by the MPC

# contact

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