

## Case In Point

### Court Awards Consultant 8 Months' Notice for 2 Years of Service

**Date:** September 8, 2015

A recent case demonstrates that despite an agreement characterizing the relationship as one involving an independent contractor, there is always the risk upon termination that the relationship may ultimately be found to require reasonable notice of termination.

At the time of termination, the plaintiff, Lewis Cassar, owned the other plaintiff, Tetra Consulting. The defendant, Continental Bank, contracted with Tetra Consulting to provide services. Tetra invoiced consulting fees on a monthly basis. After a two-year period, the parties were in the process of drafting a contract by which Mr. Cassar would become an employee of the Bank when the Bank decided to end the relationship. When this occurred, the plaintiffs sued for wrongful dismissal.

The Court, on a summary judgment motion, determined that Ms. Cassar was either an employee or a dependent contractor, and that either status entitled him to reasonable notice of termination. The factors on which the Court came to this conclusion included: he worked for the Bank exclusively for a two-year period for approximately 60-70 hours per week, he had an office at the Bank and email address, used the Bank's tools, represented himself to others as an employee and was subject to the Bank's control.

Given Mr. Cassar's age (61), length of service (two years), and senior position, the Court held that eight months was the appropriate notice period.

This case demonstrates that despite an agreement that the individual is an independent contractor, a court may set that aside that agreement if the relationship in reality more closely resembles one between an employer and employee. Employers should be cognizant of the risks, such as tax liability and wrongful dismissal, associated with inappropriately characterizing an individual as an independent contractor.

[\*Tetra Consulting v Continental Bank\*, 2015 ONSC 4610 \(CanLII\)](#)