

Case In Point

Court of Appeal Rejects Use of “Snapshot” Approach to Determine Exclusivity in Contractor Relationships

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Employment relationships generally fall into one of three categories: employee, dependent contractor or independent contractor. Exclusivity is often a key consideration when determining what category applies.

Recently, the Court of Appeal for Ontario considered the degree of exclusivity required in a dependent contractor relationship in [Keenan v. Canac Kitchens Ltd.](#) In *Keenan*, the plaintiffs had been employed for almost 25 years pursuant to a subcontractor agreement that required the plaintiffs to devote “full-time and attention” to Canac. In the last two years of the relationship, however, the plaintiffs performed some work for Canac’s competitor, Cartier, in response to a slowdown in work from Canac. Canac turned a blind eye to this outside work but, at the time of termination, used the plaintiffs’ work for a competitor to justify a determination that the plaintiffs were independent contractors not entitled to notice of termination.

The Court found that exclusivity could not be determined based on a “snapshot” of the relationship at termination; instead, the relationship in its entirety must be considered. While the plaintiffs may have performed some work for Canac’s competitors near the end of the relationship, looking at the relationship as a whole, the substantial majority of the plaintiffs’ work (97.5%) was performed for Canac. Given the plaintiffs’ long-standing dependence on Canac, the Court found that a high degree of exclusivity had, in fact, been established resulting in a dependent contractor relationship. Such a long and exclusive relationship also justified the trial judge’s finding that a notice period of 26 months was reasonable, particularly given the supervisory nature of the plaintiffs’ position and their significant responsibilities.

The *Keenan* decision is another reminder that proof of an independent contractor relationship will be in the pudding. Independent contractor relationships “in name only” will not allow employers to escape termination obligations. Ontario courts will not hesitate to examine the nature of the relationship in detail, together with its history, before determining the appropriate category: employee, dependent contractor or independent contractor.