

Independent or Dependent Contractor? That is the question

In *Keenan v. Canac Kitchens Ltd.*, the Ontario Court of Appeal had no problem in finding that two long service workers were “dependent contractors” and therefore entitled to twenty six (26) months’ reasonable notice of termination.

Although Lawrence and Marilyn Keenan (the “Keenans”) had been long term employees of Canac, they signed a new contract with Canac which identified them as independent contractors. Canac would provide the materials, locations and the set rates at which the installers would be paid, but the Keenans would have to use their own truck. The Keenans continued to wear Canac apparel, gave out Canac business cards and even enjoyed employee discounts.

Due to economic circumstances, Canac shut down and informed the Keenans that their services were no longer required. Since Canac considered the Keenans to be independent contractors, they were not provided any notice of the termination or pay in lieu. The Keenans sued Canac and claimed they were dependent contractors and were therefore entitled to common law reasonable notice.

The court found strong evidence of exclusivity, despite the fact that the Keenans performed some work for another company. The court also found that Canac exercised considerable control over all aspects of the services performed by the Keenans. Although the Keenans signed an independent contractor agreement, the court viewed that contract as a tool by which Canac attempted to avoid employment responsibilities to the Keenans.

Based on the above, the court had no problem determining that the Keenans were dependent contractors and awarded them twenty six (26) months’ of notice.

This case reminds us that where independent contractors are economically dependent on one employer, a court may find the individual to be a dependent contractor, therefore entitled to significant reasonable notice in the same way as an employee.

If you have any questions about this topic or anything else related to independent contractors, please do not hesitate to contact e2r®.