

The Unexpected Costs of “Contractors”

In the recent Court of Appeal’s decision in *Keenan v. Canac Kitchens*, employers are again reminded of the potential liabilities associated with cavalier characterization of workers as “independent contractors”.

Mr. and Mrs. Keenan worked for Canac as “Delivery and Installation Leaders” for 32 and 25 years in duration, respectively. At some point, Canac had characterized them as (and they signed contracts as) “independent contractors”.

When Canac terminated its relationship with the Keenans in March 2009, it did not provide them with any notice of termination or payments instead, consistent with their characterization as independent operators. The Keenans sued.

Both at trial and appeal, the Court found that the Keenans had been sufficiently “economically dependent” on Canac (between 75% and 95% of their gross income, depending on the year) so as to be “dependent” contractors and

therefore entitled to reasonable notice of termination or pay instead, just like regular employees.

The Court of Appeal further upheld the trial Judge’s assessment of damages on the basis of 26 months’ pay in lieu of notice. Having lost its appeal, Canac was further ordered to pay the Keenans \$24,000.00 in reimbursement of legal costs (in addition to whatever costs Canac was already ordered to pay, having lost at trial).

This case serves as a sobering alarm bell for employers who are using “independent” contractors on a sufficiently exclusive basis to render them “dependent” contractors or even “employees” for severance and other statutory purposes.

Prudent employers will consider minimizing these risks either by using contracts with binding termination clauses limiting contractors’ entitlements on termination, or perhaps even by altering existing contractors’ status and “putting them on payroll”.



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