

ONTARIO COURT OF APPEAL CONFIRMS: “DEPENDENT CONTRACTORS” ENTITLED TO REASONABLE NOTICE OF TERMINATION

*By Barry W. Kwasniewski**

A. INTRODUCTION

The Ontario Court of Appeal decision in *McKee v. Reid's Heritage Homes Ltd.*¹ recognized the existence of “dependent contractors,” who, as a result of this status, may be entitled to reasonable notice of termination of their contract, or compensation in lieu of notice. While the Court of Appeal held that the plaintiff McKee was in fact an employee, it clearly stated that the status of “dependent contractor” exists in law.

As many charities and not-for-profits use the services of contractors who are not hired as employees, this decision should cause these organizations to review their contracts to protect them from potential claims arising from termination. Contractors may take the position that they fall within the category of dependent contractors and are entitled to receive compensation in the event the contract should be terminated.

B. WHAT IS A “DEPENDENT CONTRACTOR”?

The Court of Appeal noted that the “intermediate category” of dependent contractor is defined by economic dependency in the work relationship. The existence of economic dependency requires that the dependent contractor be provided with reasonable notice of termination. In this respect, the dependent contractor’s rights are similar to that of an employee.

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¹ [2009] O.J. 5489

The factors that are considered by a court in determining whether a person is a dependent contractor are:

- 1) The duration and permanency of the relationship;
- 2) The degree of economic reliance on the part of the contractor; and
- 3) The degree of exclusivity of services.

The Court of Appeal noted that exclusivity is a hallmark of the dependent contractor category, compared to the broader category of independent contractors, as in many circumstances exclusivity demonstrates economic dependency.

C. THE QUANTUM OF REASONABLE NOTICE

While the Court of Appeal did not address the issue of the amount of notice that a dependent contractor may be entitled to receive upon termination, previous judicial decisions have determined that the length of notice will depend on such factors as: the duration of the relationship between the parties, the importance of the exclusive contract to the party being terminated, and the time needed by the terminated party to re-establish itself in a viable business with a different organization. Therefore, a dependent contractor who has provided exclusive services to an organization for a significant period of time may have a substantial monetary claim.

D. CONCLUSION

In light of the *McKee* decision, charities and not-for-profits need to draft contracts to protect themselves from liability in the event of termination. A written contract should clearly identify the status of the parties and should also define the termination rights, including any notice of termination that will be provided to the contractor.